

APPLICANTS:
Bruce J. and Mary Margaret Hegstad

CONTRACT PURCHASER:
Harford Lutheran School

REQUEST: A special exception to permit
a school, grades 6 through 12, in the
Agricultural District

HEARING DATES: 8/24/05, 9/7/05, 9/12/05,
12/12/05, 12/21/05, 1/4/06, 1/9/06, 1/23/06,
1/25/06 and 2/6/06

BEFORE THE
ZONING HEARING EXAMINER
FOR
HARFORD COUNTY
BOARD OF APPEALS

Case No. 5486

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Bruce J. Hegstad

CO-APPLICANT: Mary Margaret Hegstad

CONTRACT PURCHASER: Harford Lutheran School

LOCATION: 701 Whitaker Mill Road, Joppa
Tax Map: 55 / Grid: 2F / Parcel: 163
Third (3rd) Election District

PRESENT ZONING: AG / Agricultural

REQUEST: A special exception pursuant to Section 267-53C(7) of the Harford County Code, to permit a school offering general academic instruction at levels from sixth grade through twelfth grade in the Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

For the Applicant testified Randal Gast. Mr. Gast is employed by the Baltimore Lutheran High School Association as Headmaster. As such he provides spiritual education, vision and orientation for the organization and provides management for the school association, which is comprised of 34 congregations.

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Mr. Gast described the plan of the Applicant to construct a Middle and High School facility on the subject property (sometimes referred to as the "Millstad Property"). The school will be known as the Harford Lutheran School, and is to be affiliated with the Baltimore Lutheran School. The Harford Lutheran School, formed in 2002, is a satellite campus of the Baltimore Lutheran School Association. The Harford Lutheran School was originally located at St. Matthew's Lutheran Church, on Churchville Road, and for the past year has been located at the Lutheran Church of the Good Shepherd on Maryland Route 924 outside of Bel Air.

Mr. Gast described the proposed school as a Christian institution which will provide grades 6-12 and a college preparatory curriculum. Expected enrollment is 300 students. Three to four athletic fields, two new buildings of approximately 16,000 to 20,000 square foot each will also be constructed. Two gymnasiums will be constructed in the future.

Four of the existing cabins on the property will be retained for the current YMCA use. The Dance Conservatory and Harford Gymnastics, currently using the property, will also continue.

The buildings will be located, for the most part, to the rear of the property. This will allow green space to be maintained to the front, or Whitaker Mill Road side, of the site. The existing swimming pool will remain, although it may be covered in the future. The site plan shows the buildings to be constructed, although Mr. Gast explained that it was a 10 year rendering "looking at maximum growth." The one story Great Hall will be retained.

For the first three years of its existence Harford Lutheran School drew 90-96% of its student body from Harford County, with the remainder coming from the lower portion of Baltimore County.

Mr. Gast described the present use of the property. Harford Gymnastics uses the property as well as the Dance Conservatory. The YMCA uses the pool, and the existing northern building for its office. Existing fields are used by the YMCA and the Fallston Recreational Council. The four private residences on the property would, at least initially, remain. The Applicant will work with the groups that are now on-site on a year-to-year basis to determine if they would remain. He believes that the existing uses compliment the purpose and future operation of the Harford Lutheran School.

The property is serviced by private well and septic.

The Applicant examined the possibility of having bus service to the school to eliminate potential traffic concerns. These would be 12-15 passenger limousine type vehicles. Baltimore Lutheran encourages car-pooling. Harford Lutheran School would also encourage car-pooling. Approximately 17% to 25% of Baltimore Lutheran students are engaged in car-pooling.

Typical hours of operation would be between 8:00 a.m. and 3:00 p.m. Hours may be staggered depending upon bus patterns in the area. Both early drop-off and after school care will be provided.

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Mr. Gast envisions the traffic coming onto the property and going through a circular type of a situation which would eliminate back-ups.

Baltimore Lutheran currently closely monitors traffic, and will suspend driving privileges of both students and parents if called for. This same policy will apply to Harford Lutheran.

Full after school activities are provided. The goal is to provide for 40% to 70% of the students in after school activities. Traditionally, practices run to between 4:45 p.m. and 5:15 p.m. at the latest. Mr. Gast anticipates that after school practices may run until 6:00 p.m. Other evening activities will take place, including dances which may last until 11:00 p.m. Some other school activities may go to 8:00 p.m. or 9:00 p.m. Of the athletic facilities, only basketball will go beyond 6:00 p.m. Leagues play on Tuesday and Friday night. There are no plans to light any of the athletic facilities.

Security will include a comprehensive camera system to feed into a mainframe. Lighting is provided throughout all parking areas. The facility manager's primary responsibility is to walk the site during the day. It is planned that the on-site residences will eventually be made available to the staff. The Millstad site would have signage comparable to what is now at the Baltimore Lutheran campus, which are two entry level signs roughly 2 foot by 4 foot, and a 4 foot by 8 foot sign. Harford Lutheran is prepared to construct a dedicated right turn lane at the intersection of Old Joppa Road and U.S. Route 1, as recommended by the traffic study. Harford Lutheran is prepared to follow the recommendation of its traffic engineer to remove the sharp turn at the entrance to the property on Whitaker Mill Road and replace it with a traffic circle roundabout.

Mr. Gast does not believe the approval of the application would cause an adverse impact to the surrounding properties. The Baltimore Lutheran School has been neighborhood friendly in its neighborhood in Towson, and Harford Lutheran would be the same at the Millstad property. The Applicant is service oriented and will be a good neighborhood. The school provides open times for meetings for neighborhood associations, and has neighborhood friendly events. Neighbors can walk the property and hit golf balls. They have hosted picnic events and would be a good neighbor to the community. The Applicant has had at least one meeting with adjoining neighbors to discuss its application.

Mr. Gast believes there is a need for this type of school in Harford County and believes that the fiscal impact on the county will be beneficial.

Mr. Gast has reviewed the Staff Report from the Harford County Department of Planning and Zoning and finds those conditions to be acceptable.

The Applicant will have 1 teacher for every 11.8 students as well as 2 or 3 other staff members. There will be in total approximately 30 teachers and staff on campus.

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Most teachers report between 7:15 a.m. and 7:30 a.m. and stay until 3:30 p.m. to 4:30 p.m. Teachers will be working at other times and on weekends. Other staff members will work at traditional times.

The students involved in extra-curricular activities are picked-up and dropped off by parents, or are in carpools. Harford Lutheran should have approximately 18-20 athletic teams which will result in between 90-120 athletic events on campus per year. These events will normally take place in the evenings or on weekends.

Based on his experience with Baltimore Lutheran, Mr. Gast believes that approximately 35-45 of the planned parking spaces on the subject property will be needed for student drivers.

At Baltimore Lutheran about 40 minutes is needed for all for students to come onto the property in the morning.

The school has no plans to fence the property, although one will be installed if required. While it is possible some students may walk from off-site, Mr. Gast believes that would be unlikely.

Mr. Gast, in discussing the proposed ballfield on the Whitaker Mill Road side of the property, stated that Harford Lutheran would meet with neighbors to discuss any issues which may arise from its operation.

A Crises Management Plan for the Millstad campus will be developed.

Mr. Gast explained that the Applicant's original request was for a 500 student school. The County has now placed a condition that the school have a capacity of no more than 300 students. However, the site plan is for a 500 student school. The plan presently before the Board is one which was submitted on March 24, 2005, which was before the County's recommendation that the school population be limited to 300.

Baltimore Lutheran currently has a portable outdoor sound system. The same would be planned for the Millstad property.

There is no present plan for a full service cafeteria.

Mr. Gast believes that as many as 200 students are usually involved with the YMCA gymnastics program. The Dance Conservatory normally has no more than 20-25 students involved at any one time.

Mr. Gast indicated that while the proposed student population is 300, the current operation of Harford Lutheran has 78 students. A grade would be added every year. The school would be in the 300 student range in the year 2009 or 2010.

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The future signage would be in the area in which is now located a sign advertising the YMCA, the Dance Conservatory, and Harford Gymnastics. Mr. Gast anticipates another sign to be located at the end of the baseball diamond.

Next for the Applicant testified Brian Bennett, who lives at 12714 Lee Ben Road, Kingsville, Maryland 21087. Mr. Bennett enrolled his two children at Harford Lutheran because he was looking for a private school. The school is consistent with his religious beliefs. He is also a basketball coach with Harford Lutheran. He feels that the Millstad location is a good one for the school. He is impressed with the academics provided by Harford Lutheran. He feels his children have benefitted by going there. Mr. Bennett believes the use will not adversely impact surrounding properties, and will be an asset to the community.

Next testified Terri McGuirk. Ms. McGuirk resides at 1200 Thomas Run Road, and has had 2 children enrolled in Harford Lutheran School for the 2 years of its existence.

Ms. McGuirk is familiar with the area surrounding the Millstad property, having been raised on a farm on Old Joppa Road. She does not believe the proposal will have an adverse impact on farming or any other activity in the area or surrounding community.

Next for the Applicant testified Frank Kros, who resides at 701 Millwood Drive, Fallston, Maryland. Millwood Drive is located approximately one-quarter mile from the Millstad property. Mr. Kros has 1 child who is enrolled in 8th grade at Harford Lutheran School. He wanted his child to attend a school with small class sizes and which would encourage spiritual and character development. He was accordingly were attracted to Harford Lutheran School. He believes his child has had a tremendous and positive experience at Harford Lutheran School.

Mr. Kros and his family have lived on Millwood Drive since December 2004. The primary reason they moved to that property was the proposed location of Harford Lutheran. He intends to drive his children to school and pick them up. He will not allow them to walk as he does not believe that would be safe. He does not believe the school will have an adverse impact on the surrounding community, nor will it result in any dangerous traffic conditions. He believes the school would be an asset to the community.

Next for the Applicant was called Barbara Koenek, who resides at 708 Scottish Isle Drive, Abingdon, Maryland and is employed by the YMCA of Central Maryland. Ms. Koenek described the current operations of the YMCA on the Millstad property. It operates a summer day camp, running 11 weeks. Sports clinics are also offered on Saturdays. Outside groups occasionally come on the property for overnights in the cabins. Groups also come onto the property to use its 50 foot alpine climbing tower. Primarily the subject property is used by the YMCA in the summer. The property is used less frequently in the fall and early spring, particularly for sports activities.

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Its summer camp averages 150-200 students. The hours of operation are 7:00 a.m. to 6:00 p.m. Monday thru Friday. During the Spring and Fall groups range from 15-25 young people. Sports clinics are attended by from 10-25 people.

The witness was familiar with the proposed hours of operation of Harford Lutheran and does not believe those hours will conflict with the activities of the YMCA. She believes the operation of the Applicant and of the YMCA will be compatible and complimentary. The vast majority of the programs and hours of operation of the YMCA would be in the summer months. She sees no adverse impact on the surrounding properties, based on her knowledge of the proposal.

Next testified C. Dudley Campbell, principal and owner of Bay State Land Services, an engineering and consulting firm. Mr. Campbell was offered and accepted as an expert property line surveyor, and an expert in site plan design and the siting and approval of well and septic systems.

Mr. Campbell described the submitted site plan and proposed layout. The Applicant wishes to preserve the integrity of the existing drive going into the property from Whitaker Mill Road, along with the existing trees and much of the natural landscaping. The existing drive will be used. The existing swimming pool will be used. Efforts will be made to preserve passive and active open space, as well as much of the woods to the north and south of the property. Mr. Campbell stated that the lay-out of the proposed new buildings on the property makes the best use of the land, sets everything away from the road, uses natural barriers that exist on the property, and takes advantage of the location of the existing buildings.

According to Mr. Campbell, the Applicants intend to incorporate into the design of the school layout the existing Great Hall.

The current site plan shows a total of 143 parking spaces, although the final parking plan will be reviewed by the Development Advisory Committee. The required parking will be 143 spaces; existing parking spaces total 70. For a 500 student school the required parking would be 305 spaces. Mr. Campbell understands that the Applicant will provide at least the minimum required parking.

The property is serviced by well and septic, and not public water or sewer. There are many schools in Harford County, according to Mr. Campbell, which are outside the development envelope and are not served by public water and sewer. Harford Christian in Dublin is one of these schools, as is Harford Community College. The Harford County Zoning Code does not require that schools be served by public water and sewer.

Mr. Campbell described the location of the existing septic field, which is in the area of the proposed football field. The septic system is to be expanded, with the extent of the expansion to be determined after the Maryland Department of the Environment and the Harford County Health Department provide input. Percolation tests had been conducted on March 31 and April 19, 2005. Approximately 20 tests were done on an approximately 3 acre area of the proposed septic field.

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Mr. Campbell described the percolation findings as very successful. According to the Harford County Health Department, the existing system is in good working order for the existing uses. The State and County will give Mr. Campbell their criteria for the design of the septic field. It is possible that the septic reserve area as shown will be enlarged.

One well currently exists on the property, located to the center of the property. The well is tested by the Harford County Health Department, although Mr. Campbell does not know the frequency of those tests. He believes the last test was done approximately 6 months ago, with the results showing potable water. Additional wells will require Ground Water Appropriations Permits to be issued by the State of Maryland. The State of Maryland determines the quantity of water which will be used by the proposed school. The design of the well, and its flows, are subject to review by the Maryland Department of the Environment. Mr. Campbell stated that water taken from the aquifer is basically recycled. This results in about a 10% net loss. His opinion is that the proposed use will have no adverse impact on the wells surrounding the property. Mr. Campbell reports the Health Department has no knowledge of any well failure within the area.

Mr. Campbell does not believe the installation of a fire suppression system will have any impact on the water usage. Not until the time the final architectural plans are submitted will a decision be made on whether a fire suppression system will be required.

Mr. Campbell is also involved with the design of the storm water management system. Storm water management is based on both quality and retention. Essentially, storm water is stored and then allowed to run-off at a reasonable pace. The storm water management facility proposed at the property is shown in the southeast corner of the site plan. Mr. Campbell does not know the capacity of the pond. This will be a function of the construction phase plans and of input from the Development Advisory Committee.

There is no plan to impact any of the area surrounding the existing stream on the property, located to the southeast side of the property. No variances have been requested, and there will be no impact on the Natural Resources District or buffer areas. There are no other significant environmental features on the site. In his opinion no adverse environmental impact will result from the proposal.

On cross-examination Mr. Campbell stated while the baseball field is generally setback 50 feet from the redesign of Whitaker Mill Road, and 50 feet is the required County setback, at one location the field was planned to be, in fact, 48 feet from Whitaker Mill Road. Mr. Campbell did not know if bleachers or benches would be located within the foul zone which is located between the right field foul line and Whitaker Mill Road. This area will be within 50 feet of Whitaker Mill Road. He indicated that the Development Advisory Committee will have input on where bleachers are to be located.

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Mr. Campbell stated that the distance from the outside of the track which surrounds the proposed northern field to the boundary of the property line is about 35 feet. He believes that the required setback would be either 80 feet or 40 feet. If determined to be a side yard, the northern boundary would require a 40 foot setback. If a rear yard, the setback would be 80 feet. The entire boundary line along the northern border of the property is forested or covered in vegetation.

The Development Advisory Committee will review a landscaping plan. The site plan before the Board does not show proposed trees or vegetation in the eastern part of the property.

Mr. Campbell stated that, to his knowledge, no school exists in the County larger than 100 students where access to the school is solely by way of a round-about. He explained that a round-about is a relatively new and dynamic concept.

Existing impervious area is approximately 83,726 square feet. Total impervious surface, after the proposed project is built, will be about 251,425 square feet.

Mr. Campbell did not know the depth of the existing well or its yield. He did not know the depth of the aquifer.

Mr. Campbell believes that the MDE requirement for schools such as that proposed is 15 gallons of water per day, per student. It is possible other wells will be dug on the property in order to meet the State requirements.

A final landscaping plan will be submitted prior to the issuance of final permits and that landscaping plan may contain screening. At that time a Forest Stand Delineation would also be submitted, if requested by the Department of Planning and Zoning. A Forest Conservation Plan may also be requested by the County. Mr. Campbell also acknowledged that Staff will require additional landscaping and screening be planted adjacent to Whitaker Mill Road after construction of the improvements.

Mr. Campbell did not know the number of acres of trees that would be cleared for construction.

Next for the Applicant testified Kenneth Schmid, a traffic engineer with Traffic Concepts, Inc. Mr. Schmid was offered and accepted as an expert traffic engineer. Mr. Schmid explained that he was familiar with the proposed project, having met with the Department of Planning and Zoning and other County agencies and reviewed various documents. Harford County identified the intersections and issues which are to be considered in his traffic impact study. Generally those issues were raised during the Scoping Meeting with the County.

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Mr. Schmid explained that his study area, as defined at the Scoping Meeting, included six intersections in the surrounding area. The intersections are Maryland Route 152 at Old Joppa Road, which is a signalized intersection; Old Joppa Road at Whitaker Mill Road, which is a four-way stop controlled intersection; U.S. Business 1 at Old Joppa Road, a signalized intersection; U.S. 1 and Connolly Road and Whitaker Mill Road, a signalized intersection; Tollgate Road and Ring Factory Road West, an un-signalized intersection; and Whitaker Mill Road at the property.

During the course of his study Mr. Schmid determined the existing conditions on the Millstad property. The Applicants' proposal is somewhat unique in that it has relatively precise start and end times. Mr. Schmid's group studied the morning weekdays traffic between the hours of 7:45 a.m. and 8:45 a.m., and the afternoon hours between 2:30 p.m. and 3:30 p.m. He defined these times as peak hours. The morning study time fell somewhat toward the end of the normal peak traffic time. Generally the afternoon study period of between 2:30 p.m. and 3:30 p.m. generally falls somewhat outside the normal afternoon rush hour, which would be usually between 4:30 p.m. to 6:00 p.m.

Mr. Schmid determined background conditions during the course of his study. In doing so he determined the impact of projects which had been approved but not yet built. The County identified the projects which were to be considered. Those projects (from Page 11 of his report), include a residential development known as Fallston Crossing; a Royal Farm store at the intersection of U.S. Route 1 and Milton Avenue; a proposal to refurbish the Greystone Lodge as a restaurant; and a series of changes at Jones Junction. The County also requires that growth rates be considered.

After this information is gathered the final step is to determine the impact of the proposed development, add that to the background levels of service, and arrive at the total future traffic conditions at key intersections.

Counts at the studied intersections were taken in November and beginning of December, 2004. The count at the intersection of Whitaker Mill Road and the subject property was taken at the end of April, 2005. No external circumstances existed on those days which would have affected traffic patterns, according to Mr. Schmid.

Mr. Schmid also determined future conditions on-site by using a published manual entitled the Institute of Transportation Engineers Trip Generation Manual, which contains trip generation information on private schools.

After analyzing this information Mr. Schmid then determined future traffic conditions at each of the studied intersections, recalculated the capacity at which those intersections will operate, and compared that to County thresholds.

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Mr. Schmid then summarized his findings. With the exception of the intersection at Business U.S. Route 1 at Old Joppa Road, all studied intersections will continue to operate within acceptable levels of service as dictated by Harford County, Public Facilities Guidelines. The U.S. Route 1 at Old Joppa Road intersection will, under existing conditions, fail to meet current level of service requirements and will be further exacerbated by background development and the impact associated with the proposed school.

Mr. Schmid explained that due to the Harford County Adequate Public Facilities law, the Applicant is required to either cut back the size of its development until the intersection operates at an acceptable level of service, or provide improvements to mitigate the impact of the proposed development. Since the intersection already fails, cutting back development would not be helpful. Therefore the intersection is to be mitigated by the Applicant. Mr. Schmid indicated that the stop approach of Old Joppa Road is to be improved to a two lane outbound condition creating a separate left turn lane and a separate right turn lane. The extra delay added by the school will be mitigated, and the actual operating condition will be better than it is currently. Harford Lutheran is prepared to pay the cost of the road improvement at that location.

All other studied intersections, with the addition of the school and other documented conditions, would operate at acceptable levels of service.

Mr. Schmid then discussed certain assumptions he made in his study. He assumed that about 75% of the traffic leaving the proposed school site will go to and from Old Joppa Road on Whitaker Mill Road. About 25% of traffic would come to and from the school on the Whitaker Mill Road corridor from Ring Factory Road and Tollgate Road. He believed that about 20% of the traffic is going to head to the south toward the Mountain Road corridor; about 20% of traffic is going to continue west to the U.S. Route 1 corridor; about 35% of traffic is going to turn right and head toward the U.S. Route 1 Business corridor and then proceed north into the Bel Air area. He believes this will provide a “pretty quick” disbursement of traffic.

Mr. Schmid explained that the current entrance to the subject property from Whitaker Mill Road is at a 90 degree bend at Whitaker Mill Road. The inside of the curve is heavily wooded, which restricts sight lines. He believes that the entrance must be reconfigured in order to eliminate potential safety problems. Accordingly, he has proposed changes to the configuration of Whitaker Mill Road, including the removal of trees and opening of sight lines, and a possible change to include a stop sign on the school property. A reconfiguration of the drive onto Whitaker Mill Road would not be acceptable in Mr. Schmid’s opinion.

Accordingly, the Applicant and the County had agreed to consider a round-about at Whitaker Mill Road. The idea of a round-about is to have a continuous flow of traffic through the intersection. Motorists in the intersection do not yield to others. Round-abouts tend to slow traffic coming into the intersection and provide a continuous flow, which becomes a very efficient flow of passage.

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Roundabouts are designed to allow motorists to travel at approximately 15-20 m.p.h. One does not drive at a high rate of speed through the round-about. Mr. Schmid believes a round-about will provide more efficient traffic movement on and to the site. He believes this is far superior to an un-signalized intersection. He believes from a safety viewpoint it will be significantly better than existing conditions. Roundabouts reduce the number and severity of accidents, and at this location would resolve the existing sight distance problem. This round-about would be located partially on the subject property with the land dedicated to Harford County. Harford Lutheran would pay for the cost of the round-about which would be in the range of \$200,000.00 to \$250,000.00. This round-about will not adversely impact the ability of large vehicles such as school buses or farm equipment from traversing Whitaker Mill Road. Mr. Schmid believes that the “cue lanes” will be no more than 2 or 3 cars on any approach, based on a 500 student school.

Mr. Schmid is aware of the one-lane bridge along Whitaker Mill Road. He proposes no changes to that bridge. He believes that the proposed school will create more traffic using the bridge but it’s “certainly not going to push it to a capacity problem or exacerbating any existing conditions of the bridge now.” Mr. Schmid said the school will generate about a 150 vehicle a day increase in that section of Whitaker Mill Road.

Mr. Schmid then addressed the intersection of Whitaker Mill Road and Old Joppa Road. He believes that since the intersection has been converted to a four-way stop that the accident rate has gone significantly down. With the background projects and the proposed Harford Lutheran School, “for the most part” the level of service will be a “B” level at Whitaker Mill Road and Old Joppa Road.

Mr. Schmid believes that the existing road system can handle the increase in traffic predicted to occur in the road system. He believes that the installation of a round-about will improve the existing traffic flow. He believes that the intersection of U.S. Business 1 at Old Joppa Road would be helped greatly by a right-turn lane. He believes that very few people try to make a left turn off of Old Joppa Road onto U.S. Business 1. Mr. Schmid believes that the proposed school will not overburden an existing school system or cause a greater problem at this location than it would at some other location. The impact on all studied intersections will be mitigated, or will continue to work at acceptable levels of service.

Mr. Schmid also added that the traffic impact study will be updated and re-analyzed if the process should proceed past special exception approval. The Applicant would have to mitigate the impact or do additional road approachments and address any other impacts that might be revealed by a new traffic study.

On cross-examination Mr. Schmid indicated that an original traffic study was prepared that identified a 300 student school. That traffic study was revised in anticipation of a 500 student school. The revised traffic study was introduced by the Applicant and marked Applicants’ Exhibit No. 12.

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Mr. Schmid does not have a copy of the original 300 student study, which was used as a basis for the 500 student study.

Mr. Schmid indicated that his study anticipates the school to be grades 6-12 with school operating hours to be 8:00 a.m. to 3:00 p.m., although actual opening and closing hours may be slightly different.

Mr. Schmid understands some students may stay after school for extracurricular activities. The I.T.E. Trip Generation Manual suggests that about 65% to 70% of students leave during the first dismissal, with the remaining 30%-35% staying later. Mr. Schmid believes that while transportation needs at public schools vary for private school children (in that public school students usually use more public transportation and school buses), the number of students using the school after regular school hours is probably fairly similar to public school numbers.

While Mr. Schmid did traffic counts during the 5:00 p.m. to 6:00 p.m. peak traffic hour, he did not do 'level of service' analyses of the intersection. He imagines the intersections would be more stressed during those times.

Mr. Schmid stated that he would expect a 101 single family home project such a Fallston Crossing (built at the location of the old Fallston Hospital) to generate approximately 9.56 trips per unit, per day. The Royal Farm store being built on U.S. Route 1 at the corner of Milton Avenue is projected to generate approximately 4,100 trips per day. Many of these trips will be during peak hours. Convenience stores, according to Mr. Schmid, are generally not traffic generators, they are traffic interceptors.

The proposed Greystone Restaurant on U.S. Business 1 is projected to generate less than 250 trips per day, which would be close to the peak drive time.

Mr. Schmid did not have trip generation numbers for the expansion of the Jones Junction new car dealership, although he would guess around 2,000 cars per day would be a fair estimate.

Mr. Schmid indicated he had received no information on the proposed Wal Mart on U.S. Business 1 between Mountain Road and Whitaker Mill Road. A Wal Mart, based on Mr. Schmid's experience, would generate a "whole bunch" of trips, in the range of 7,000 to 8,000 cars per day. The Wal Mart project was not brought up during the Scoping Meeting with the Department of Planning and Zoning, and was not included in Mr. Schmid's traffic analysis. He does not believe that Wal Mart was at that time approved to a point that it was required to be considered as a background development. The Wal Mart project is not required to be considered until road improvements that are associated with the project are designed and bonded for construction. If approved Wal Mart would add more traffic flow to the area road system. He does not believe it would have a great deal of impact to the interior intersections studied. It would impact the intersections along U.S. Route 1.

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His study did not consider a proposed 300 townhouse condominium project to be located between Maryland Route 152 and Whitaker Mill Road along U.S. Business Route 1. For a 300 unit age-restricted development, Mr. Schmid would estimate about 1,200 trips per day would be generated.

It was suggested to Mr. Schmid that motorists use Old Joppa Road as a “cut through” between Mountain Road and U.S. Route 1. Mr. Schmid indicated this was possible, but as roads are improved, and any impact of particular project is mitigated by additional road improvements, cut through traffic may lessen. He added that traffic could increase on those roads as well. Mr. Schmid also stated that a project had been proposed for the “Grempler Property” which is on the corner of Old Joppa Road and U.S. Business Route 1. A traffic study had been prepared two years ago, but the project never went forward. The project was commercial in nature, but Mr. Schmid could not state the specific use proposed.

Mr. Schmid discussed the methodology employed in the study. One method is called the Critical Lane Analysis Methodology (C.L.U.). Harford County uses the methodology utilized in the Highway Capacity Manual. The County does not utilize C.L.U. methodology. If a development is within the development envelope the intersection is required by the County to work at a level of D service. Outside of the development envelope a signalized intersection is required to operate at a level of C service or better. At non-signalized intersections, County law requires stop-control approaches to those intersections work at a D level of service inside the development envelope, or a C level of service outside of the development envelope.

Mr. Schmid found that the intersection of Old Joppa Road and Business Route 1 is failing. This finding was based upon the County’s highway capacity analysis. The Critical Lane Analysis was done by Mr. Schmid’s office because the State Highway Administration looks at critical lane analysis, and Mr. Schmid’s firm does that as a courtesy to the State Highway Administration. Using the Highway Capacity Manual the average delay at an intersection is determined, which translates to a level of service. The traffic impact study prepared by Mr. Schmid’s office was a study of intersections’ capacities. It is not a study of whether hazardous conditions exist. While Mr. Schmid looked at traffic conditions, obtained accident data, and made visual observations of the road, he did not include any of this information in his traffic impact analysis.

Mr. Schmid indicated that Whitaker Mill Road between its intersection at Old Joppa Road and the entrance to the proposed school has the capacity to hold approximately 40 cars, in a one-way direction. For a 300 student school, approximately 180 vehicles will be dropping children off during the peak hour in the morning.

Mr. Schmid stated that even with the Applicant’s proposed improvements at the intersection of Old Joppa Road and U.S. Route 1, the intersection would continue to be in a failing condition. County law requires developments to mitigate the impact on a failing intersection. The road improvements suggested will mitigate the impact of the proposed development on the Old Joppa Road and U.S. Route 1 intersection. While the proposed additional lane at this intersection will make the condition somewhat better than it exists today, the level of service will not change from a level of service D.

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Mr. Schmid did not predict the level of service of the Old Joppa Road and U.S. Route 1 intersection between the hours of 5:00 p.m. and 6:00 p.m. in his report; the only prediction was the level of service between 2:30 p.m. and 3:30 p.m. He believes, however, that the intersection will continue to fail since there is probably more traffic moving through the intersection between the hours of 5:00 p.m. and 6:00 p.m. than there are at 2:30 p.m. to 3:30 p.m.

Mr. Schmid stated that the Applicants are required to comply with Harford County's applicable Public Facilities legislation in its final design for the site. The traffic impact study must be updated and a re-scoping of the traffic impact study will be performed. This will include any new developments that have come online since the last Scoping Meeting.

Mr. Schmid believes that due to the location of the site traffic will get out onto the major road system rather quickly for a project outside of the development envelope. He believes that if the site were located further into the rural area of Harford County the impact would be greater. Mr. Schmid was not aware of any other school in Harford County that is actually located on a minor collector road.

Mr. Schmid clarified that his traffic impact analysis was based on a 500 student school. However, his response of 180 cars entering the school during the a.m. hour was based on 300 students not 500. Mr. Schmid also believes that there is an existing right-of-way at the intersection of Old Joppa Road and U.S. Route 1 in which to construct an additional lane. Mr. Schmid also indicated that between 80 to 100 cars can be "stacked" on the subject property awaiting the drop off area.

Next for the Applicant was recalled C. Dudley Campbell. Mr. Campbell stated he had revised the site plan since the hearing of August 24, 2005. The revised site plan was marked as Applicants' Exhibit No. 17.

Mr. Campbell described the revisions to the site plan. The first set of revisions was to the three athletic fields. Those fields are the track and soccer field located to the north side of the property; the football field in the middle of the property; and the baseball field located in the southwest quadrant. The location of the track and soccer field has been revised and redirected to the south, further away from the property line at the northern part of the property. While it was originally within approximately 25 feet of the northern property line, it has now been revised to move it to 50 feet away from the property line.

The football field has also been reoriented and relocated to the east to bring it closer to the infrastructure of the school facility. This necessitated a parking revision.

The baseball field has been relocated and pushed further away from Whitaker Mill Road in a northeast direction. The field sizes have remained the same. However, it has been pushed away so that the closest it comes to the minimum setback line is 52 feet. Some parking has been relocated.

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The site plan was revised by adding shading showing existing landscaping as determined from GIS and aerial photographs. These areas are generally on the eastern-most property line and the northern-most property line. The buffer area, to be vegetated, is to be 50 feet in certain areas, and is shown on the revised site plan. Along the northern boundary line there exists an approximately 30 feet wide buffer of trees. This will be expanded by adding an additional 20 foot planting strip, for a total of 50 foot buffer of trees and plantings.

Furthermore, a berm is now proposed along Whitaker Mill Road in the location of the baseball field. This berm will be 6 foot high with 3:1 slopes, with tree plantings on top.

The revised site plan also shows the proposed septic reserve area in the northwest quadrant of the property. Three additional locations of wells are shown, with 200 foot radiuses. These are proposed wells. It is not know if they will be needed. No part of the sewage disposal system will be allowed within 200 feet of any well.

In explaining his revisions, Mr. Campbell stated that the ballfields, which in his opinion are allowed within the 50 foot setback, were moved out of the setback in order to provide a 'cushion'. The revised site plan also shows, by black dots, perc tests. It is possible that the actual waste disposal system could be smaller than as shown on the plat.

Mr. Campbell then identified a letter, marked as Applicants' Exhibit 18, from Fred Faulkner of the Harford County Health Department. That letter states that the projected waste water flows from the school and other activities on-site are well within the site maximum capacity for sewage absorption. Mr. Faulkner, in using the Maryland Department of the Environment Manual, computed the total gallons per day of waste water to be generated from the site to be approximately 4,950, stated Mr. Campbell. He then computed that approximately 105,000 square feet of absorption area will be necessary. Mr. Faulkner then determined that the proposed system could handle as much as 28,000 gallons of waste water a day. Accordingly, the septic area as shown on the revised site plan is 5 times larger than what would actually be required. The septic system would be subject to a final design during the building permit process subject to review by D.A.C. It is also possible that a M.D.E. Water Appropriation Permit will be necessary. The school would also comply with County reforestation requirements.

Mr. Campbell was able to obtain a well yield of the existing well from the Harford County Department of Health. The well yield had been determined to be 8 gallons per minute.

The buildings closest to the eastern most property line appear to be one story in height, or approximately 20 feet. One building on the property is proposed to be higher, which would be an approximately two story classroom building, or approximately 45 feet in height. Mr. Campbell believes the minimum building setback is not applicable to the athletic track or the parking lots.

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For the Harford County Department of Planning and Zoning testified Anthony McClune, Acting Director. Mr. McClune summarized the findings and recommendations of the Staff.

Mr. McClune stated that the Applicants' property meets or exceeds the acreage requirements of the Code, which requires a parcel of at least 3 acres in size, and an additional 875 square feet for each student in excess of 50 students. The Department suggests the maximum number of students on the site be limited to 300.

The Applicant further meets the additional requirement of having 300 feet of road frontage. The property actually has approximately 2,000 feet of road frontage.

A front yard depth of at least 50 feet, and side yard and rear yard depths of at least 50 feet must be maintained. These requirements are met as the proposed building will be a minimum of 150 feet from the nearest side and rear yard property lines.

A side yard depth equal to at least two times the height of the tallest institutional building located on the parcel is also required. This requirement has been met, says Mr. McClune.

While the Applicants propose no school buses, if school buses are utilized in the future they must be parked to the rear of the building and screened. The Applicant can meet this requirement due to existing trees and its proposal to create additional landscaping.

The Code requirement of a buffer yard is met.

Mr. McClune and the Department believe that the proposal can be developed on the property without causing an impact to traffic in the area. This finding is based upon the preliminary traffic impact study prepared by the Applicants. Mr. McClune stated that a final traffic impact study will be submitted if the project is approved and it will be reviewed in light of Adequate Public Facilities standards.

The Department believes that the project will not have an adverse fiscal impact on the County. There would be no effects from odors, dust, gas, smoke, fumes or similar issues. Adequate police and fire protection is available.

The Department finds the request to be generally in compliance with planning principles and practices. There will be no impact on schools, houses of worship, theaters or hospitals in the vicinity. Mr. McClune and the Department find the proposal to be consistent with the 2004 Master Plan. The project does not encroach into a Natural Resources District. Accordingly, the Department finds no environmental impact. There will be no impact on cultural or historic landmarks.

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The Department recommends approval, subject to six conditions:

1. The number of students be limited to 300.
2. The Applicants shall submit a detailed site plan to be reviewed and approved through the Development Advisory Committee.
3. The realignment of Whitaker Mill Road and proposed road improvements be in accordance with County design standards and shall be approved by the Department of Public Works.
4. Additional landscaping and screening shall be provided adjacent to Whitaker Mill Road offering construction and improvements. A landscaping plan shall be submitted to the Department of Planning and Zoning for approval.
5. The outdoor playing fields shall not have lighting for evening use.
6. The Applicants shall obtain all permits and inspections for the construction of the proposed facility.

Mr. McClune affirmed that the revised site plan meets all County standards, and no variances are required.

Mr. McClune's, and the Department's, opinion is that ballfields are not considered structures and are not required to meet the front yard or rear yard setbacks as established in the Code. However, they are considered part of the use and are required to meet any applicable use setbacks.

In explaining the scope of the traffic study, Mr. McClune stated that the traffic consultant is given a list of all the approved preliminary plans that may not have actually been built yet, but have received preliminary plan approval. The traffic from these planned projects are to be incorporated as part of the background information in the traffic study. Any of the projects approved since that time will be considered in the final traffic study which is submitted to the County Development Advisory Committee ("DAC").

In discussing the proposed round-about, Mr. McClune indicated he was unaware of any problems which existing round-about present to any schools located near them. Those schools would include North Harford Middle and Elementary School, and Abingdon Elementary School.

Mr. McClune and the Department believe that a 300 student maximum facility will not have an impact on the surrounding community above and beyond that typically expected of such a facility located elsewhere in the zone. This is one reason the Department recommended a maximum of 300 students. He knows of no potential adverse effect on the agricultural industry. The proposal will provide educational opportunities for the citizens of Harford County. Mr. McClune believes there is a need for this facility in Harford County.

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Mr. McClune is of the opinion that the operation of a 300 student Middle and High School as proposed will have no impact significantly different in character and intensity from the impact inherent in the operation of a Middle and High School located anywhere else in the agricultural zone.

The property is located outside of, but very close to, the development envelope.

On cross-examination Mr. McClune acknowledge that the site design is for 500 students, not 300. The total impervious surface on-site will be 251,425 square feet.

Mr. McClune's understanding of the proposed height of the berm to be located along Whitaker Mill Road in the vicinity of the practice field is 6 feet, with 6 foot trees on its top. Mr. McClune and the Department do not consider the track and ballfields to be structures.

Mr. McClune indicated that the proposed, future Wal Mart store is currently an approved project in Harford County. The approval of Wal Mart took place before the issuance of the Staff Report. The Applicant was not requested to revise its traffic impact study to include Wal Mart traffic counts. Mr. McClune also stated that a large Royal Farm convenience store was approved after the Scoping Meeting which formed the basis for the traffic impact study. Mr. McClune was uncertain if the 300 unit townhouse development was approved before the Scoping Meeting, although it was approved before the Staff Report was issued.

Mr. McClune stated that Maryland Route 165 is designated as an arterial road; Maryland Route 24 is designed an arterial road; Tollgate Road is designed, he believes, to be an urban collector road; Singer Road between Route 22 and the round-about discussed earlier is probably also classified an urban collector road.

Regarding the Harford County Master Land Use Plan, Mr. McClune agreed that the proposed site is within the area designed as the rural Joppa area in the 2004 Master Plan. The Plan was prepared in conjunction with the Joppa/Joppatowne Community Council. The Harford County Department of Planning and Zoning presented the plan to the Harford County Council in May 2003 on behalf of the Joppa/Joppatowne Community Council.

Mr. McClune confirmed that the Staff Report found the proposal to be consistent with the 2004 Master Plan.

Mr. McClune was asked to read from the Master Land Use Plan:

"Protection of the character of the Joppa rural area is strongly supported in order to retain the rural atmosphere of Joppa. It is recommended that there be no extension of public water and sewer into the area along Maryland Route 152 north of I-95, and the development envelope boundary at I-95 be maintained throughout the area, the designation of public services shall be minimized and improvements to the road network shall preserve and protect the natural character of the roadway while providing safe and efficient travel. Schools, libraries, and other such facilities will be directed south of I-95 toward

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U.S. 40 in the Joppatowne portion of the community. The protection of Little Gunpowder Falls and Winters Run resources will be provided a retaining vegetative buffers. The rural character and water resources must not be compromised by high intensity or incompatible development.”

Mr. McClune explained that the 15 gallon per day estimate of well usage would include the use of water by faculty, students and other employees. Mr. McClune believes that Whitaker Mill Road is similar to other rural collector roads throughout Harford County. Most rural collector roads have limited shoulders and lack sidewalks.

Mr. McClune stated that, again, the proposal is consistent with the Master Land Use Plan. He said private schools draw from larger geographical areas than do public schools. Private schools tend to serve a larger geographic base. He believes that a private school draws throughout the entire County and he did not believe that the placement of a private, 300 student school in this area would promote additional development into the area above and beyond what is anticipated in the Master Plan.

In opposition testified Paul Brashears, Jr., who resides at 1207 Whitaker Mill Road, Joppa, Maryland. Mr. Brashears indicated his location on Protestants' Exhibit No. 3. Mr. Brashears described Whitaker Mill Road as a very scenic area. However, emergency vehicles cannot cross the one-lane bridge. Neither fire trucks or ambulances, to his knowledge, can cross the bridge. He is worried that the traffic congestion on Whitaker Mill Road, particularly at the proposed round-about, during certain periods of the day would prevent emergency vehicles from reaching his house in the event of an emergency. He is also worried about the influx of inexperienced drivers through the area who will be driving to the school. He described Whitaker Mill Road as narrow and winding with blind curves and blind driveways. He described the area as very quiet. He feels that sporting events and other activities at the school will negatively impact the environment.

Next testified Tina Matthews of 1609 Wood Ridge Manor Road, which is located a short distance from the intersection of Old Joppa Road and Whitaker Mill Road. Ms. Matthews described her main concern as traffic. Traffic is heavy, especially at peak hours. She also feels that Whitaker Mill Road is too windy and narrow to handle present traffic, and certainly not increased traffic. She is concerned about the constant traffic which the school will be generating since it will be in operation most of the time.

Next testified Michael Wheatly who has resided at 502 Old Joppa Road, on the southwest corner of Whitaker Mill Road and Joppa Road since 1973. Mr. Wheatly is concerned about traffic. He maintains livestock on this property and he fears for their safety due to traffic which will be generated by the proposed use. In the last 10 years he has had 5 instances of vehicles people crashing through his fences. He looks directly into the intersection of Old Joppa Road and Whitaker Mill Road. Over the years he has called 911 as many as 20 times to report series personal injury accidents at the intersection. He believes that a “totally untenable traffic situation” will result if the additional proposed traffic is added to the “narrow, windy, unshouldered, difficult to negotiate under any circumstances. . .” Whitaker Mill Road.

Next testified Theresa Magness who resides at 901 Whitaker Mill Road. Ms. Magness and her

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family own a farm on the northern and eastern borders of the proposed school site. Their farm consists of 175 - 200 acres and is currently in active agricultural use. The witness, her family and another family reside on the farm property.

Mrs. Magness described her concerns about the proposal. First and foremost is traffic. Whitaker Mill Road is a very narrow road with unique aspects, such as the one-lane bridge. Many areas have limited sight distances. Mrs. Magness' husband is constantly moving equipment along Whitaker Mill Road to other properties that he farms. Farm equipment is also moved up and down Old Joppa Road. It is difficult to move this equipment even on a good day.

She is also concerned by the one-lane bridge. The road now functions as a cut through for many people. The road will be a direct route from Route 24 to Wal Mart. To her knowledge Whitaker Mill Road is the only road that can be used as a cut through for this purpose.

Next testified Jeffrey Conti of 515 Old Joppa Road, which is located at the southeast corner of the intersection of Whitaker Mill Road and Old Joppa Road. Mr. Conti described this area as being outside the development envelope and in an agricultural district. Mr. Conti described the process of creating the Joppa portion of the Harford County Master Plan. He participated in the work sessions.

The Joppa Plan is important to Mr. Conti. The Plan was an attempt to not have a "magnet", similar to a commercial venture or large institution like a library or school which would draw traffic through the community, on Whitaker Mill Road. He also feels that a round-about would violate the rural character of the road and neighborhood.

Next testified Joseph Potter of 902 Merriweather Drive, Fallston. Mr. Potter opposes the proposal due to the condition of Whitaker Mill Road and the impact additional traffic will have in his neighborhood.

Next testified Tracey Siemasko of 405 Summit Drive, Fallston. There are no sidewalks along the roadways. Ms. Siemasko is worried about children, including her school aged children and other children in the area, who walk to and from school buses. She also worries about cars cutting through her neighborhood when Old Joppa Road and Whitaker Mill Road are backed-up. Ms. Siemasko's children are picked-up between 8:15 a.m. and 8:20 a.m., and get off the school bus between 4:00 p.m. and 4:10 p.m. The location of the school bus pick-up is Woodbridge and Summit, within Ms. Siemasko's subdivision.

Next testified David Oberender of 604 Millwood Drive. Mr. Oberender and his family have lived at their location since 1973. Mr. Oberender had taken photographs which were offered and accepted into evidence as Protestants' Exhibit 2-1 through 2-18. Mr. Oberender described the photographs, which show various aspects of the road network in the area.

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The witness is concerned about traffic if the proposal is allowed. By his calculations, and based on Mr. Schmid's testimony, approximately 75% of the cars would leave school and the round-about and head toward Whitaker Mill Road and Old Joppa Road, and about 25% would turn right onto Old Joppa Road toward Route 1. 25% would be approximately 41 cars. He expressed concern about the cars coming into the school in the morning, coming up Route 1 and turning left on Old Joppa Road. There will be stacking along Route 1 making a left into Old Joppa Road, according to the witness. He said this will be a very dangerous traffic situation. Among other consequences, he says, would be increased traffic over the one-lane bridge as people attempt to avoid the U.S. Route 1 and Old Joppa Road intersection. The witness also stated that people do not turn left onto U.S. Route 1 from Old Joppa Road. To do so would be to place one's life in jeopardy. He agrees this is a failed intersection; he does not agree that the proposed mitigation will help the community.

Next for the Protestants' testified Elmira Hall who resides at 719 Millwood Drive. Ms. Hall expressed her general concerns about the environment if the school is constructed as proposed. People who do not live in the area do not seem to have the same concern and care as residents. The school is not compatible from an architectural point of view with the surrounding properties. The witness further believes that noise from the school would tend to impact the horse breeding operation located at Country Life Farm, and will generally be detrimental to the lifestyle of people in the community. Ms. Hall is also concerned about the lack of attention being paid to the potential impact of the increased traffic on the school buses turn around at the one-lane bridge.

For the Applicant was recalled C. Dudley Campbell who testified he had prepared a revised site plan, offered as Applicants' Exhibit 19.

Mr. Campbell explained the reasons for the revision of the site plan. Subsequent to the submission of the initial site plan it was determined that the stream located to the south side of the property is required to have a 150 foot setback, as contrasted with the 75 foot setback as shown on the original site plan. Accordingly, the baseball field originally located in the southwest quadrant has been replaced with a proposed sports practice field. Neither the location nor size of buildings have changed. No changes were made to the parking areas. Mr. Campbell understands that the proposed practice field will be used for gym classes and physical education classes. It does not meet the qualifications for a full fledged sports field as it does not have the necessary dimensions. There is no lighting proposed for the sports practice field, or for any other field. There is no sound system or stands or other structure proposed for the sports practice field. It will not be used for actual game competitions.

Mr. Campbell indicated the two buildings that are described "existing storage" located generally in the center of the site plan. He explained they are mere foundations only, not actual buildings, and no plans exist to construct buildings on those foundations. No other uses as shown on the site plan will be impacted by the 150 foot buffer. The site's water quality and storm water management facilities are located partially within the 150 foot buffer. This is allowed by Harford County Development Regulations.

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Mr. Campbell had made no determination as to whether grading or excavation would be required on-site. Steep slopes exist, having a 15% to 20% grade. The area in which the practice facility is to be located will be graded and leveled. Mr. Campbell explained, as he had earlier testified, that the two structures in the approximate center of the site labeled 'existing storage' will not actually be used for storage. He further reiterated that the 150 foot buffer can legally contain a substantial portion of the storm water management and water quality structure as shown on the site plan. Incursions into this buffer area by this facility are allowed.

No variance will be necessary to allow the existing Millstad theater to remain. Once it became known that a 150 foot buffer was required, and the proposed baseball diamond could not be built, the practice facility was proposed. No part of the baseball field can be permitted within the 150 foot buffer.

Mr. Campbell stated that a storm water management facility is not considered a structure by the Harford County Code. The water quality facility and storm water management facility will require grading during their construction. He has not yet sized this facility and cannot tell how much grading will be necessary. However, the size of the facility as shown on the site plan is approximately accurate.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune, acting Director. Mr. McClune stated that the stream identified on the site plan requires a 150 foot buffer. Upon being notified of this determination the Applicant acted to remove the baseball field from the 150 foot buffer. Mr. McClune stated that it cannot fit between the required buffer and Whitaker Mill Road. Accordingly, the Department recommended that it be removed. Mr. McClune does not believe there is anything on the revised site plan which would mandate a change in the Department's recommendations or conditions. While he believes some minor revisions of parking and ball field layouts may be required, none of these are substantial or require any changes to conditions.

Mr. McClune verified that storm water management and water quality facilities can be located within the Natural Resources District. He also verified that the areas which originally contained two buildings, as identified by Mr. Campbell, in fact contain only foundations. They are basically the remains of two old buildings shown to the rear of the gymnasium on the site plan and no longer exist. He understands these foundations will not be used. Board of Appeals approval would be necessary if the Applicant intends in the future to use these foundations.

If the existing theater building encroaches into the 150 foot buffer, the Department will consider that to be a non-conforming structure since its existence predated the creation of Natural District Regulation buffer areas created in 1985. Accordingly, no variance would be necessary. However, if expansions to the building are proposed in the future, then that expansion or addition would require Board of Appeals approval.

The proposed ballfields cannot be located within the buffer area. The area in which the ballfield would have been located is covered by existing forest, and cannot be removed. However, water quality facilities and storm water management facilities are specifically allowed in the buffer area by Code. It would make no difference if the storm water management facility were considered a structure or not.

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Mr. McClune agrees that the site plan is somewhat misleading when it states “existing storage to remain” at the location of two foundations when, in fact, buildings cannot be erected on those foundations by the Applicant without Board of Appeals approval. It would be appropriate for the Hearing Examiner to clarify that these two foundations cannot be used for the reconstruction of buildings. Mr. McClune also believes it would not be harmful for a condition to be appended to any favorable decision by the Hearing Examiner that the existing Millstad building cannot expand further into the Natural Resources District buffer.

The Applicant has reduced its request from a 500 student body to a 300 student body school. However, no commensurate reduction in the square footage of the classrooms was made. “. . . the plan did not shrink the size of the buildings or the halls, the activity areas.”, said Mr. McClune.

Mr. McClune described the changes to the revised site plan as being insignificant. The soccer field is pulled a little bit further to the south away from the northern property line. The total number of parking spaces is slightly reduced. The buildings remain in the same location. The drive aisle remains in the same location although the old plan showed a bay of parking where the football field is now and on its eastern side. These are the most notable changes in Mr. McClune’s opinion, and are all very minor. Total parking spaces are reduced from 305 to 272. The only reason the Department requested a revised site plan was because of the intrusion of the proposed baseball diamond into the 150 foot buffer.

Mr. McClune explained that Protestants’ Exhibit No. 3. shows the general road layouts, property boundaries, and the school property itself highlighted in yellow. The map incorporates several of the surrounding neighborhoods.

Counsel for the Applicant then stated the Applicant would have no objection to a condition of approval to prohibit the two buildings shown as existing storage, which are actually just foundations, from being used for any school purpose without subsequent Board of Appeals approval, and that any expansion of what is shown as the theater building would also require subsequent Board of Appeals approval.

For the Protestants’ then testified Frances MacIndoe, who resides at 705 Millwood Drive. Ms. MacIndoe explained that her home is on the third lot in on Millwood Drive, to the east side. Her location was identified on Protestants’ Exhibit No. 3.

Ms. MacIndoe has lived at her property since 1978. She is familiar with the proposed application and had been present at most of the prior hearings. Ms. MacIndoe is against the proposal. She is most concerned about the traffic. The entry onto Whitaker Mill Road from Millwood Drive has been changed. Previously, the road was much steeper with bad sight distances. The road was somewhat enlarged which improved the sight distance. However, sight distance along Whitaker Mill Road to the road from Millwood is still not good. One must pull out from Millwood Drive carefully and gingerly. She also believes the intersections at Old Joppa Road and Whitaker Mill Road, and the Whitaker Mill Road and U.S. Route 1, are dangerous.

Ms. MacIndoe also emphasized her belief that the one-lane bridge on Whitaker Mill Road is

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hazardous. The road coming down from the east side is very steep and gets slippery with the least amount of water. Her husband was involved in an accident while going across the bridge. She does not want to see the bridge become two lanes as it is part of the charm of the area. However, it is a dangerous location particularly for young people who do not have experience in driving. With the additional cars which the school will generate and attract, getting in and out of Millwood is going to be difficult in the mornings.

Next testified Barbara Bledsoe who resides at 600 Millwood Drive, at the corner of Millwood and Merriweather Drives. She identified her location on Protestants' Exhibit No. 3.

Ms. Bledsoe has resided at her property for 32 years. She has been present for all previous hearings. She is opposed to the Application. Whitaker Mill Road is dangerous, particularly for young teenage drivers. She herself had a bad experience at Old Joppa Road and U.S. Route 1 several years ago when she was rear-ended while stopped at the intersection attempting to make a left onto Old Joppa Road from Bel Air Road. She suffered two broken vertebrae in her back as a result.

Twenty years ago she signed a petition to have a traffic light installed at Whitaker Mill and Bel Air Road. The blinking light which was put up did not help.

Ms. Bledsoe believes the intersections are all extremely dangerous, particularly for unfamiliar drivers. She never turns left onto Bel Air Road from Old Joppa Road. She cannot imagine anyone making left turns right off of Old Joppa Road onto Bel Air Road.

Next testified William Whiteside. Mr. Whiteside resides at 511 Millwood Drive, and identified his location on Protestants' Exhibit No. 3. Mr. Whiteside has resided at that location with his wife since 1988. His opinion concerning the application is that the Millstad property is not a good site for the proposal. A motorist experiences about a 30 foot rise in the hill coming up Whitaker Mill Road from the south to what is the proposed circle. He believes that the circle will, accordingly, be approached blind by motorists coming from that direction.

Next testified Warren Barth who resides at 1200 Whitaker Mill Road. Mr. Barth identified his property on Protestants' Exhibit No. 3. Mr. Barth is against the proposal. The area suffers major water problems. People have had wells re-drilled or installed new ones because of lack of water. His well is 450 feet deep and it was put in in 1964. He is also concerned about sewage. Any spill from the school down Timber Branch is going to go right into Edgewood Arsenal and its water supply via Winters run and Timber Branch, which comes across Mr. Barth's property.

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Next testified Morita Bruce, who resides at 507 Millwood Drive, also marked on Protestants' Exhibit No. 3. Ms. Bruce described photos which were marked as Protestants' Exhibits No. 4A - 4G. Her property is located four parcels south of Whitaker Mill Road on Millwood. She and her family have resided at that property since January 1976. Ms. Bruce identified herself as a retired engineer. She discussed certain specific concerns about the proposal. She is opposed to the school being built at the proposed location due to its size and the intensity of use. Such a large school would endanger the students at the school primarily because of the traffic issues. Ms. Bruce discovered the buffer area mistake on the original site plan. She believes that not enough information has been presented and is available. She does not believe enough review has been completed. There may be other safety issues.

Referring to Exhibit 4-A, Ms. Bruce believes that the location violates the Harford County Land Use Plan and the Joppa Community Plan. Whitaker Mill Road is one of the most hazardous roads in Harford County. All other rural middle and high schools, both public and private in Harford County, are on State highways. There is a single access and egress point proposed. This would create severe traffic congestion and safety problems. Noise from the ballfields as well as ballfield lighting will destroy the area's rural character. The site will require extensive rebuilding and construction, which will destroy the rural character of the area and create safety problems.

Ms. Bruce believes that heavy well withdrawals will cause environmental damage to the surface water systems.

Ms. Bruce feels that a school at this location will violate Harford County 'visions', of the Master Land Use Plan. The proposed school is outside of the development envelope. This violates the vision that development be concentrated in single areas. Whitaker Mill Road and Old Joppa Roads are very dangerous.

Furthermore, Vision Two requires that sensitive areas to be protected. The wetlands and stream on-site are located on the southern part of the property. Furthermore, required grading may impact slopes on the property.

Vision Three is that growth is to be directed to existing population centers. Resource areas are to be protected. The Land Use Element Plan supports protection of agricultural lands. The proposed school would be surrounded by farms. She believes this proposal will tend to "bust" the development envelope. She does not agree that a project of the size and intensity of the proposal should be constructed in a rural road.

Vision Four mandates stewardship of the Chesapeake Bay and the land as a universal ethic. She believes the proposal violates this vision.

Furthermore, the Joppa Community Plan of the Master Plan has been violated. It states that schools, libraries, and other facilities to be built to the south of I-95 toward U. S. Route 40 in the Joppatowne portion of the community. This would not allow the proposed school at the proposed location.

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In summary, Ms. Bush believes that the proposal violates at least four of the Harford County Master Land Use Plan Visions.

Ms. Bruce then described Exhibit 4-B as being another view of the site. She notes there is much open space between Maryland Route 152 and Maryland Route 24 south of Business Route 1. Whitaker Mill Road is the only cut through between Route 152 and Route 24. The exhibit shows farms surrounding the proposal, as well as the location of the one-lane bridge. She then identified a G.I.S. print-out from the Department of Planning and Zoning. This also indicates many farms around the proposed site. Ms. Bruce summarized these documents as showing that the proposal is in the middle of a farming area, with two older subdivisions, both of which have been in existence for over 30 years.

Ms. Bruce generally identified the photographs and summarized them as indicating dangerous road conditions. Generally these show a lack of shoulders along Whitaker Mill Road, with poor sight distances, and a narrow one-lane bridge making for difficult traffic situations.

Ms. Bruce compared the proposed site to that of the existing Baltimore Lutheran campus. Ms. Bruce believes that the Baltimore Lutheran campus has a good road system, and does not have the sort of traffic problems associated with it as does the proposed site on Whitaker Mill Road. The Baltimore Lutheran campus has well designed access points. No blind spots exist. By comparison, main roads into Baltimore Lutheran did not cause problems. People cannot get trapped on its property because there are three driveways into and out of the property. Roads are straight into Baltimore Lutheran, with good clearances. The stop light on Cromwell Bridge Road works well. The high school is built along highways, according to Ms. Bruce, as has been done with other schools in the rest of Harford County.

Ms. Bruce also presented photographs of the proposed Highland school on Route 543 in Harford County. The photographs show that Route 543 is flat in the location of the proposed school, has good visibility, and no blind spots. There is room to pull off the road. The Highland school has access to major roads, including I-95. Heavy traffic uses Route 543, with no obvious problem or safety issues.

Ms. Bruce believes the traffic study submitted by the Applicants must be revised to recognize that many motorists will actually be accessing the subject property through Maryland Route 147. She believes there will be a major problem on Route 147 as it is not wide enough for people to pass individuals trying to turn at that location.

Ms. Bruce testified that C. Milton Wright is on Maryland Route 543. Fallston Middle and High Schools are on Maryland Route 152. Harford Christian School is located on Route 136 and Harford Tech and John Carroll School are located on Maryland Route 22. Mountain Christian School is on Route 152. North Harford Middle and High School are located on Maryland Route 165. Every high school and middle school with which she is familiar is located on such a highway. However, Harford Lutheran School would be located at least one mile from the nearest highway. This is not a good spot and sets a disturbing precedent. She also testified that Harford County school buses cannot cross the on-lane bridge on Whitaker Mill Road, and must back into Winters Drive. A child sits in the back of the bus with a hand held sign stating "Bus Backing".

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The witness then discussed noise and lights. She believes the site will be used virtually continuously, along with uses by bands, concerts, school plays and other events at night.

She is also concerned about portable lighting and audio equipment being used. These impacts are very inappropriate in a rural area.

The site itself is very hilly, with slopes. Extensive grading will be required. No information has been presented on the type of grading that will be performed on-site. She believes it is inappropriate to make a decision without information on these aspects of the use.

Finally, she believes the proposal will change the character of the neighborhood. She believes other sites can be located which would serve the Applicant's purposes.

Ms. Bruce next described her fears that grading will effect water quality in the area, and will have a negative impact on the spring fed stream along the property. She stated that the stream now supports trout. The corridor in which the stream is located is undisturbed because of the farms around it, and it supports a large animal population. The proposed use would harm this environment.

Ms. Bruce then described well water usage. Testimony at other hearings is that State guidelines allow 15 gallons per day for students, 5 gallons per day for others. The total use for 300 students will be 4,950 gallons, or just slightly under the 5,000 gallons per day that would require a M.D.E. Groundwater Appropriation Permit. She has not seen any evidence that the aquifer can handle this withdrawal on a steady basis. She believes this will have an impact on nearby wells. Many of the wells in the Millwood subdivision are shallow, most of them are 30 years old. At least two neighbors have had to re-drill their wells because they went dry. As the site is now zoned agricultural, a total of four houses could be developed on-site. A 300 student school would use about 11 times what would be consumed if four houses were built on the property. A 300 student school is equivalent to putting 28 houses on the property.

In summary she believes that the proposal will cause a greater harm to the residents of the area if it were allowed at the proposed site because of the impacts on the residents, farmers and others in the area. She believes the proposed school should be located on a highway.

Under cross-examination Ms. Bruce stated she had not conducted a traffic study. She is not an environmental engineer. She has never designed a well or septic system. She is not a land planner.

Next, approximately 35 individuals stood, identified themselves by name and address, indicated he or she is a neighbor of and/or concerned about the subject property, and expressed general opposition to the proposal for the reasons previously given by the witnesses.

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Next testified William F. Weidman, III, who identified himself as living 1007 Dellwood Drive. Mr. Weidman expressed his concern about the storm water being generated by the proposed use. His property, along with Mr. Barth's, are the last two properties at the location of Timber Creek and Winters Run. He experiences erosion, and is concerned about additional erosion due to storm water run-off from the site. Mr. Weidman has lived on his property for 32 years.

Next testified Fire Chief Thomas Schaech. Chief Schaech is and has been employed by the Baltimore County Fire Department for 24 years, currently serving as Captain. He had also, until recently, served as the Chief of the Bel Air Volunteer Fire Company. He is President of the Harford County Volunteer Fire and EMS Association. Chief Schaech was offered and accepted as an expert in fire, rescue and emergency management.

Chief Schaech is familiar with the application. The Bel Air Volunteer Fire Company has an interest in the application as the proposed school is in the area which is served by the Bel Air Volunteer Fire Company.

"Anytime there is a structure that has the potential for housing large numbers of individuals in institutional facilities such as this, it does pique our interest because of potential for life, safety, and fire protection issues."

Chief Schaech is familiar with the Whitaker Mill Road area. The Bel Air Volunteer Fire Company will be able to respond to an emergency or other call at the proposed location, although there would be "challenges". The Department is concerned about water supply, access and egress.

Chief Schaech stated that the site location is not currently served by municipal water. If a fire occurred the Department would be required to use portable tankers to move water in and out of the site. The movement of water to and from the site would also be made somewhat more difficult as roadways that service the property are narrow and do not permit large vehicles to pass side by side. Since there is but one way in and one way out the placement of large-diameter supply lines up the lane would be required. The travel of apparatus to and from the fire site would be limited.

Chief Schaech's particular concern about the school is that there is only one way in and one way out. He envisions a difficult situation if an emergency were to arise with occupants having to leave the site while fire equipment apparatus is attempting to access the site. This conflict would be a "literal fight", with apparatus trying to get in, and personal vehicles attempting to leave. As Whitaker Mill Road has no shoulders, there is essentially nowhere for traffic to go if a large vehicle, particularly an emergency vehicle, needs to access the site.

Chief Schaech also stated that the fire department is limited in its approach to the subject property as equipment cannot approach via West Ring Factory Road to Whitaker Mill Road due to the bridge over Winters Run.

Chief Schaech is familiar with the proposed round-about at Whitaker Mill Road and the subject

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property. He believes that a traffic round-about would not improve the Department's access to the subject property or to the residential properties to the east of the site. Round-about are "quite difficult" to negotiate with large apparatus because of the placement of directional signs. He has particular concerns about the ability of an aerial ladder device to, in an expeditious fashion, negotiate the traffic round-about. Round-about are designed to be traffic calming devices and cause vehicles to slow down. Chief Schaech identified a letter, Protestants' Exhibit No. 7, which summarizes the Department's position.

Chief Schaech stated that the water wells on-site are not accessible to fire and rescue apparatus. He discussed the Fallston High School which has a 30,000 gallon underground system which supplies the school and fire suppression devices in the event of a fire. To his knowledge, Harford Lutheran School does not plan to have a similar system. Water would be brought in from off-site to Harford Lutheran School.

Accessing an emergency at the proposed location would present a greater challenge than other similar facilities on different roadways that provide better access and egress. Chief Schaech does not believe that the proposed location is a desirable location for a large assembly of students based on his belief that if an emergency occurs and requires the response of multiple pieces of equipment that equipment must be able to get in and out of the site in a timely fashion.

The Department's inability to cross the one-lane bridge on Whitaker Mill Road is a current problem and would not change if the school were constructed. Chief Schaech also stated that in the event of a fire emergency, apparatus from both Fallston Volunteer Fire Company, and possibly Joppa Magnolia Volunteer Fire Company, would respond. It is likely that equipment from Bel Air would access the property by way of Old Joppa Road from Maryland Route 152, or U.S. Route 1, or Harford Road to Whitaker Mill Road.

Chief Schaech agreed that the Fire Department would have an opportunity for input at the time of DAC review.

Chief Schaech acknowledged that a number of schools in the County are not served by public water. The Fire Department maintains a summary of water sources available for pumping. He believes that under the National Fire Protection Life Safety Code certain parts of the school would be required to have sprinkler systems. Chief Schaech stated that, depending upon environmental conditions, it is possible for equipment to access the school by driving across a field or through a parking lot. Equipment now drives through the round-about on Tollgate Road in the vicinity of Home Depot without problem. He agreed that the swimming pool on-site could possibly be used as a source for water for fire suppression purposes.

Chief Schaech stated that, at present, a fire emergency vehicle proceeding down Whitaker Mill Road to the site would go directly into the site and would not need to negotiate the sharp right hand turn that is to be replaced by a round-about.

Chief Schaech knows of no other school in the County of the size proposed which has only one means of ingress and egress from a rural road such as Whitaker Mill.

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Chief Schaech described the typical route taken by the Bel Air Volunteer Fire Company to access the site: U.S. 1 Business South; left on Old Joppa Road pass Country Life Farm; and left on Whitaker Mill Road.

Next for the Protestants testified Mary Jo Pons who resides at County Life Farm, located on Old Joppa Road. Ms. Pons stated that her family had originally come to Harford County in 1933 and have since that time developed their land as a thoroughbred horse breeding operation. Her family has spent a considerable amount of money to maintain fences to keep horses in and people out.

County Life Farm consists of about 120 acres and includes a number of homes for family members. Some of the barns have been converted to residential structures for use by farm employees.

At any one time the farm may host up to 100 horses. These horses are brought onto and leave the farm by horse vans, particularly between February and June when mares are brought to the farm for breeding purposes.

The farm is known internationally, says Ms. Pons.

Ms. Pons explained her concerns about school children coming through the fences and onto the farm without permission. This is dangerous for both the horses and for the children.

Noise and other commotion bothers the horses. She feels that the site is too small to fill the school's needs.

Country Life Farm has 3 driveways which access the property from Old Joppa Road. The Millstad property cannot be seen from her house.

Next for the Protestants was called Joseph Lacetera who has resided at 1006 Whitaker Mill Road since 1974. Mr. Lacetera identified his property on Protestants' Exhibit No. 3. His property is south of Auburn, off Whitaker Mill. Mr. Lacetera identified himself as a self-employed physicist.

Mr. Lacetera believes that the application should be denied. The site is fundamentally inappropriate for the school based on its location and traffic and safety issues concerning Whitaker Mill Road. He believes it to be far worst than any other similar site in Harford County. All of the schools of which he is familiar are on main roads. Baltimore Lutheran School is also on a much larger road than is the Millstad site.

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Mr. Lacetera, based on his own driving experiences through the Whitaker Mill curve at the subject property, and also through roundabouts similar to that proposed for Whitaker Mill Road, believes that the roundabout will slow traffic down to approximately 12 m.p.h. In his opinion this will cause a traffic back-up on Whitaker Mill Road toward the 90-degree bend. Cars will be stopped on Whitaker Mill Road, particularly during the times when students are accessing and leaving the site. This will create a dangerous traffic situation, particularly in bad weather.

Mr. Lacetera is concerned about the impact the school will have on his property values. He is concerned about noise and impact on the community. Mr. Lacetera explained that he has a wonderful, comfortable feeling about his community. He does not wish to see it destroyed.

Mr. Lacetera discussed the stream flowing through the Millstad site toward Duncale Farm. This stream is marked by backwater ponds that host aquatic life, fish, toads, etc. A lot of it is wetlands. These properties provide much needed habitat for birds and small animals. It is also a filter for water and a source of clean air.

Mr. Lacetera's well is 400 feet deep and has twice gone dry. He is concerned about his water level and the water supply in the area.

Next testified Robert Banker who resides at the corner of Millwood and Merriweather. Mr. Banker's location was noted on Protestants' Exhibit No. 3.

Mr. Banker believes the proposed school will have the following impacts: roads cannot handle anticipated new traffic; the aquifer will not provide sufficient water for the school and the community; the one-lane bridge over Winters Run will be an obstacle to the orderly movement of increased traffic.

Next for the Protestants testified Peter Tridone who resides at the corner of Dellwood Drive and Millwood Drive.

Mr. Tridone had visited and observed traffic flow at Baltimore Lutheran School. He counted cars on September 7th and September 12th from 7:15 a.m. to 8:15 p.m. In that one hour period on both days he counted an average of 388 cars (Baltimore Lutheran School has a student body of approximately 500). He believes, based on his count, that actual traffic entering Baltimore Lutheran's campus is understated by Applicant's traffic experts at 148 cars per hour. Based on Mr. Tridone's count, the peak count to Harford Lutheran School would be 233 cars, or 89 more cars per hour than computed by Mr. Schmid. Mr. Tridone also stated that Mr. Schmid's study was from 7:45 a.m. to 8:45 a.m. Mr. Tridone believes that the traffic will generally be over by 8:20 a.m. Accordingly, he does not believe Mr. Schmid's count coincides with actual peak traffic.

Mr. Tridone also notes that Baltimore Lutheran School has three entrances. Mr. Tridone took photographs of the cars entering Baltimore Lutheran. These cars were offered and accepted as Protestants' Exhibit No. 9A - 9J. Mr. Tridone also believes that shoulders on Whitaker Mill Road are not adequate.

Next testified Joseph Bonhoff who resides at 501 Millwood Drive and who marked his location

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on Protestants' Exhibit No. 3. Mr. Bonhoff feels the proposal will have an impact on his quality of life, and that of his neighbors'. He will be impacted by the noise, light, traffic, and potential problems with wells. He is also concerned about potential problems with emergency response personnel and equipment. Whitaker Mill Road is used as a cut-through from the Tollgate Road and Route 24 area for cars getting over to Route 1 or Mountain Road.

Next testified Daniel McNeill, who resides at 706 Winters Drive who has specific concerns about the proposal. He believes the proposed school violates the Joppa area Master Land Use Plan. He believes the use will not preserve the rural characteristics of the area. Traffic and noise will degrade the quiet serenity of the area. The placement of the round-about will completely change the nature of the winding country road which is Whitaker Mill. It will be very difficult in the evening for drivers to get through the round-about because of the school traffic. He feels that Whitaker Mill is a very narrow road even by Country road standards. There are only a few roads in the County that have come close to Whitaker Mill. It has blind spots throughout its length, and there are areas of the road with poor sight distances.

Mr. McNeill also believes the ability of emergency vehicles to access the property will be very limited.

Next testified Mark Slaughter, who resides at 905 Dellwood Drive. Mr. Slaughter is opposed to the application. There is no mechanism to insure the number of students does not go past 300. The revised plan did not change the capacity from 500 to 300. He believes there is a plan for future expansion. He feels that the water consumption calculation did not take into account showers, or the use by staff or administrators. He is also worried about environmental impacts, including the potential spillage of heating oils or other fuels.

Whitaker Mill Road is, in his opinion, essentially a paved farm path. It lacks shoulders or pull-off areas for accidents or disabled vehicles. It lacks curbs and gutters and storm drains for rainwater and snow melt. There is ponding in various parts throughout the course of the road. In severe weather it floods and on occasion is closed in one direction or the other. Whitaker Mill is not able to accommodate pedestrians or bicycles. He does not believe the school will be a true community school like a public school. It will be a commuter school, more like a community college. It does not conform with the Harford County Master Land Use Plan.

A number of other witnesses testified in opposition to the proposal, generally for the reasons already expressed.

For the Protestants testified Gloria Moon of 2519 Jerusalem Road. Ms. Moon identified herself as a member of the Joppa/Joppatowne Community Council at the time of the creation of the 2004 Harford County Master Land Use Plan. Ms. Moon stated that hundreds of people were involved in the process of preparing the Plan. She identified Protestants' Exhibit No. 22 as the Joppa/Joppatowne Community Planned Area. It represents the area that was to be covered by the Joppa/Joppatowne Community Plan. This Plan was incorporated within the 2004 Master Land Use Plan.

Ms. Moon identified a letter from Joseph Kocy, marked and accepted as Protestants' Exhibit

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No. 23 which generally described the participation of the Community Council in the creation of the Joppa/Joppatowne Plan. The Plan was to guide land use decisions. She also believed that the Department of Planning and Zoning would rely upon that Plan in making recommendations concerning the community.

Ms. Moon believes the proposed school is not consistent with the Joppa/Joppatowne Community Plan.

Next for the Protestants' testified Patricia Dallam of 1121 Hollingsworth Road, Joppa, Maryland. Ms. Dallam also identified herself as having been involved in the preparation of the Joppa/Joppatowne Community Plan. She generally identified the process of arriving at that Plan. She believes the proposed school should be denied.

Next testified Joseph Xavier who resides at 403 Summit Drive, Fallston, Maryland. Mr. Xavier believes the school is in the wrong location. He identified other locations in Harford County that he thought would be better. He reviewed the comprehensive zoning log of November 1, 2005 and identified all properties shown of at least 20 acres in size. He identified a list of 23 locations which he then narrowed down to locations that are zoned agricultural, but had pending requests to up-zone to R1 or R3. However, the sites identified had also received a recommendation from the Department of Planning and Zoning to remain agricultural. He also limited a number of areas which he identified as potential candidates for schools that would be convenient for he and his wife to take their own children to. He identified 8 locations meeting this criteria that also had good access. He identified one of these properties as being for sale.

Mr. Xavier had determined that the Harford County Code Section 267-60.1 has defined, under site No. 23, the bridge on Whitaker Mill Road as a historic property and to be given the protections of a historic property.

Next for the Protestants was called John Dillon, Jr. Mr. Dillon was offered and accepted as an expert in Planning and Zoning with an emphasis on agricultural and rural zoning.

Mr. Dillon is familiar with the application before the Board, is familiar with the Harford County Master Land Use Plan, the neighborhood, and had met and talked with certain residents of the area. He had spoken with one or more representatives of the Department of Planning and Zoning and is familiar with transcripts of earlier hearings, particularly the transcripts of the testimony of Mr. McClune and Mr. Cunningham. He has worked on master plans in the past and takes master plan guides very seriously.

Mr. Dillon then described and offered into evidence various portions of the Harford County Master Plan. He also identified and offered portions of Maryland Smart Growth Initiative as Protestants' Exhibit 29. Mr. Dillon offered, and it was accepted, a portion of the Master Land Use Plan dealing with the Joppa/Joppatowne community as Protestants' Exhibit 31.

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Mr. Dillon believes the proposed use is high intensity, not a low intensity use. The Master Plan is to be used as a guide. It is to be taken very seriously by the agencies involved. It sets the policy for the County.

Mr. Dillon believes that the project should not be approved under Code Section 267-9. The proposed school is to be located on a narrow, rural road that services a predominately agricultural area. Young, inexperienced drivers will utilize the road. Mr. Dillon is concerned that emergency vehicle access could be restricted due to accidents in the area.

People and agricultural areas do not mix. The more people you have the more conflict is present.

In reviewing Code Section 267-9, Mr. Dillon observed that a number of people, and farm operations, exist in the community. Traffic from the proposed school will be an inconvenience to people using the roads.

No sidewalks are proposed. No clearly defined shoulder is evident on Whitaker Mill Road. A number of culverts and ditches parallel the road system which, in his opinion, makes Whitaker Mill a dangerous road.

Mr. Dillon believes that the proposed use is in conflict with the requirement of orderly growth of the neighborhood and community and fiscal impact on the County. He believes that the noise to be generated to sporting events will be a nuisance on the neighborhood. There is no water and sewer; there are potential problems with emergency situations. He does not believe that the location of a 39 acre school on a 17 foot winding rural road is good planning practice. The use is not in compliance with the Master Plan.

He also believes there will be an adverse environmental impact due to the need for grading and alteration of the land. There may be some impact to the stream with borders the property.

Mr. Dillon explained that the Baltimore Lutheran School is located in a different type of neighborhood than that as proposed in Harford County. Baltimore Lutheran is at the intersection of Cowpens and Concordia, just off of Cromwell Bridge Road. It is located next to an established residential community zoned at 3-1/2 houses per acre. It is also near Loch Raven High School. It is very much in an urban environment with its west side up against the beltway.

Mr. Dillon found property similar to that proposed for the Harford Lutheran School in the I-95 and Route 152 area in Harford County. He did not determine if any of those properties were for sale. The location of the proposed Harford Lutheran School is in an area that is not conducive for a school of this size compared to other locations that have direct access to a good highway system and with relatively few constraints.

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The witness identified Protestants' Exhibit No. 33 as an aerial blowup of the property produced through the G.I.S. section of Harford County. The witness attempted to confirm, or rebut, the testimony of Mr. Magness concerning his property line and the apparent conflict within the testimony of Mr. Magness and Mr. Campbell. The witness stated that Exhibit 33 shows a property line fairly close to the fence described in that area. Measuring from that line to the swimming pool the witness determined there to be a distance of 128 feet or 130 feet. This is close to the tape measure of Mr. Magness, which was 137 feet. Mr. Dillon had taken the latest site plan prepared by Mr. Campbell and had a mylar prepared of it. That mylar is an exact replica, in semi-transparent form, of the site plan. It was used for overlay purposes. The mylar was used to overlay the aerial photograph offered as Protestants' Exhibit No. 33. The overlay shows that the swimming pool is located in a different spot than as shown on the aerial. The school on the site plan appears to be about 100 feet off what is actually shown in the field, give or take a few feet. It also shows the gymnasium as being off by several feet in its location as well. There appears to be some discrepancy between the location of the buildings as found in the field, on the aerial, and as shown on the site plan.

It does not appear that the storm water management facility as described by the Applicant could be fit on the plan given the revised locations of the structures. Wetlands also appear to run right through the center of the storm water management facility. There is also a discrepancy at the northwestern corner of the property between the mylar and the site plan.

In addition to the swimming pool being approximately 130 feet from the property line instead of 250 feet, as shown on the site plan, there appears to be a discrepancy in the northwestern property line of about 20 feet.

Mr. Dillon stated that in reviewing the site plan and his G.I.S. overlay he could not say which lines were accurate. Other roads similar to the ones around the subject property are located within Harford County. He believes that a school of the nature proposed would be good for Harford County, although he has a problem with its proposed location. Mr. Dillon believes that the school will have an impact, and that impact will be greater, more intensive, if the school expands.

Mr. Dillon agrees that the subject property is "very close" to the development envelope. It is close to significant population zones of Harford County. The property has an existing institutional use on site.

Next testified Thomas Hicks, who resides at 617 Fairway Drive, Towson, Maryland. He is familiar with the properties of 1208, 1210 and 1212 Whitaker Mill Road as they are owned by his sister-in-law, Mrs. W. Paul Hicks. These properties are located on Winters Run at the single lane bridge on Whitaker Mill Road and lie about a half mile from the proposed Harford Lutheran School.

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Mr. Hicks is employed by the Maryland State Highway Administration. Mr. Hicks has been a frequent visitor to the area and his sister-in-law's farm for the last 15 to 20 years. He is familiar with the area roadways and watershed area. Mr. Hicks has worked for the State of Maryland for approximately 38 years. He graduated from Yale University, has worked for the U.S. Army Corp of Engineers, has taken numerous courses on highway engineering, traffic engineering and traffic safety. He has been qualified as an expert in both District Court and Circuit Court proceedings in the State of Maryland. Mr. Hicks was offered and accepted as an expert in highway operations, traffic engineering and traffic safety.

Mr. Hicks is generally familiar with the site plan and the details of the proposed school. He has also had an opportunity to review the traffic study which was prepared by Mr. Schmid. Mr. Hicks also reviewed data from the Institute of Transportation Engineers, referred to in the Applicants' traffic study, and he also acquired crash data for Ring Factory Road and Whitaker Mill Road and other traffic volume data for those two roadways. Accident and traffic volume data was obtained from the State Highway Administration; volume data from the County Public Works and Traffic Engineering. He is also familiar with the Baltimore County Rural Road Study. He has been present for most, although not all, prior hearings in the case. He was present during testimony of the Applicants' traffic engineer, Kenneth Schmid.

Mr. Hicks believes that the proposal would adversely effect the roadways involved and the general neighborhood.

As basis for that opinion, Mr. Hicks stated that the traffic study report of Mr. Schmid did not sufficiently cover the safety and operations impacts on the roadway. The report did not specifically mention roadways. It did mention volumes and capacity. Mr. Hicks' stated;

"The roadway has geometric features that are conducive to a rural collector roadway intended for local traffic, not intended for through traffic or by passing traffic. The vertical alignment and the horizontal alignment, the intersections, the curves, the one-way bridge, these are all things that affect the operation along the roadway."

He found no mention in the report of pedestrians or bicycles which may be a factor for the school. There was no mention of trucks or buses. These are all operational elements along this particular set of roadways – being Ring Factory Road and Whitaker Mill Road, which will undoubtedly cause problems.

Mr. Hicks also stated that only about forty percent (40%) of accidents occurring in the state are reported to police. He believes this percentage holds true for Harford County as well. Fourteen (14) accidents were reported in a roughly 1.8 mile stretch of Ring Factory Road. Generally, local residents care for the neighborhood and understand their roads. However, foreign traffic usually does not know roads and do not care about the neighborhood.

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Of the seven (7) crashes reported in the three (3) year period studied by Mr. Hicks, five (5) were run off the road accidents. These are the type of accidents which usually occur along rural roads of this nature. They are caused by speeds which are too fast. Drivers who either don't make the curves or are confronted by farm equipment or another vehicle. There is no room for error on roads such as these. Mr. Hicks believes this accident rate is typical of the types of accidents that will happen with increased traffic. Based on traffic data provided by the Applicants there will be approximately 150 added trips per day.

To summarize, Mr. Hicks stated that when foreign traffic uses a local road, traffic tends to be high speed. Relative speed between the speeds of the vehicles and the speed of various roadways is a major cause of accidents in the state.

Mr. Hicks stated that 14 accidents in a 1.8 mile stretch of Ring Factory Road over a period of three (3) years (2002-2004) is not an unusual traffic rate. It does not stand out, and is typical of a rural road.

Mr. Hicks has acted as Director of the Office of Traffic and Safety for the State of Maryland since 1991. He is familiar with roads within Harford County and the State of Maryland. The witness would characterize Ring Factory Road from Route 1 to Whitaker Mill Road as a local collector road. It is intended for local traffic. When asked to compare that section of Ring Factory Road to Whitaker Mill Road to other local collector roads in Harford County, he stated that other typical roads tend to serve higher speed traffic, and have curbs, gutters, and wider lanes. They are intended to connect roadways such as Route 24 to Route 22. Ring Factory Road, close to the property, is similar to other rural roads within the agricultural zone in Harford County.

Next for the Protestants testified Janet Lacetara of 1006 Whitaker Mill Road. Ms. Lacetara has resided at her property, located about seven tenths of a mile from the proposed site, for 31 years. Ms. Lacetara expressed three concerns with the school; emergency services, water supplies, and quality of rural life.

She believes the increased traffic of the school will have an effect on the access of emergency vehicles to the Millwood development and residents along Whitaker Mill Road who live south of the school. The four-way stop at the intersection of Old Joppa Road and Whitaker Mill Road and the proposed round-about will present potential "choke points" which will impede emergency vehicles attempting to respond to emergencies.

Ms. Lacetara herself has serious rheumatoid arthritis. Two of her neighbors have serious and life threatening health problems which could require emergency service intervention. She does not want her or her neighbors' lives to be in danger because emergency services cannot get through the gridlock and congestion on the road because of the school traffic. Furthermore, she believes that fire vehicles will have a difficult time responding for the same reasons.

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Ms. Lacetara has concerns about the quantity of ground water the school will be consuming. She notes a swimming pool will be on-site. Normally this would require showers. M.D.E. allocates additional water for showers. This could be as much as an additional 3,000 gallons per day which will increase school consumption to 7,950 gallons per day.

She believes potential water use will have a negative impact on her well. M.D.E. reports that 27 wells have been replaced or deepened. Ms. Lacetara has personally experienced two instances when her 408 foot well has temporarily gone dry. Her neighbor has had two wells put in. A number of wells in Millwood have dried up. A large water demand in the area will put additional burden upon the ground water and cause potential problems to her well and other wells. M.D.E. should make a detailed study to determine the location and strength of the local aquifers.

She also feels that if the proposed school is allowed some or all of the surrounding farms will eventually be developed and sold. She does not believe this should be encouraged as this would destroy the rural community.

Next for the Protestants testified Robert Bruce, who has resided at 507 Millwood Drive for approximately 30 years. He lives about one-quarter mile from the entry to the proposed school. Mr. Bruce was employed as an engineer at the Edgewood Chemical and Biological Defense Command.

Mr. Bruce addressed traffic. He has found several errors in the traffic study provided by the Applicant which requires additional information. The study is not an examination of overall traffic safety along the corridors. It is simply an assessment of traffic at select intersections. Mr. Bruce believes that the Applicants' study is in error. He believes that the carpooling rates proposed by the Applicants are misstated, and that the study under estimates traffic movements. He also believes that the traffic to and from the site will be concentrated to 40 minutes, not an hour. This will increase traffic frequency by another fifty percent (50%).

He also feels that major intersections were not studied at all. The intersection of Whitaker Mill Road and Ring Factory Road was not studied. There may be as many as 5 to 6 crossings per minute at the bridge. Another intersection missed was that of Route 147, at Connolly Road. He believes the study misstated the traffic flow on Connolly Road and Route 147. Motorists go south (toward Baltimore) on Route 147 and turn left onto Connolly Road so that they can cross Route 1 at Connolly Road, rather than hazard a left-turn from Route 1 onto Whitaker Mill Road. Turning left onto Connolly Road will cause a back-up onto Route 147. Traffic is very heavy, particularly in the morning, on Route 147. He believes that the study should have been performed on all of the intersections at issue. He believes that waiting for DAC is not realistic.

Next for the Protestants' testified Brian Kidd, who has resided at 806 Whitaker Mill Road, about two-tenths of a mile past the entrance of the proposed school, for about 12 years. He agrees with the concerns expressed by his neighbors.

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Mr. Kidd has two young children who walk to the end of his driveway to catch the bus. About 10 minutes to 7:00 in the morning three buses pass in front of his house. Mr. Kidd worries about the safety of his children at that location, worries about drivers speeding and losing control of their vehicles. He believes that if the school is approved increased traffic will result. Any use of the roadway at that time would be an impact to the safety of that road.

Mr. Kidd is concerned about the sediment pond which will be located across Whitaker Mill Road from his property. He is worried about its drainage and maintenance. He is concerned about the construction of the school itself, particularly the use of Whitaker Mill Road by construction equipment.

Next testified Kenneth Radke of 1203 Whitaker Mill Road. Mr. Radke lives across the road just before the one-lane bridge, south of the proposed site. Cars have knocked poles down in his neighborhood twice, resulting in loss of electricity. He has witnessed accidents on Whitaker Mill Road.

Mr. Radke has had one well go dry, and hauled water for four months. He is concerned about the impact of the school on the aquifer. Mr. Radke has two working wells, one of which produces 300 gallons per day before it goes dry.

Next testified Elizabeth Hicks who resides at 1212 Whitaker Mill Road, Joppa. Ms. Hicks has lived on her property for approximately 50 years. Her property line goes down to the center of Whitaker Mill Road, across the center of the bridge and to the other side of the stream to the center of Ring Factory Road.

Ms. Hicks stated that buses, today, are allowed to go over the bridge over Winters Run but because of redistricting they do not. Often times ground water tends to run across Whitaker Mill Road. In winter this area will freeze so that there is a large frozen area on Whitaker Mill Road. Occasionally, accordingly, there is water and ice on Whitaker Mill Road. This concerns Ms. Hicks because of the potential impact on traffic. Last winter a school bus came down Whitaker Mill Road, slid on the ice and could not get back up. A County truck was called. The County dump truck which responded could not stop on the ice either. Ms. Hicks stated that no motorist should ever drive down Whitaker Mill Road toward the one-lane bridge whenever there is snow or ice on the roads. It is very hard to get out, up the hill.

Next testified Lori McNeill, 706 Winters Drive, Joppa, Maryland. Ms. McNeill also saw a school bus get stuck on the one-lane bridge and could not back out. The bridge was blocked for about a half an hour.

A number of neighbors again testified, indicating their opposition to the request, for reasons previously stated by other witnesses.

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Randall C. Gast then appeared again for the Applicant. Mr. Gast has reviewed the revised site plan and feels that the revisions will not affect the operation of the Harford Lutheran School. He has also heard many of the objections raised by the neighbors. None of these objections has changed his opinion concerning the proposed use.

Mr. Gast and the school still intend to make the facility available for use by selected outsiders. He and the school will accept the condition, if imposed, that limited or prohibited the use of school facilities, particularly sports fields by outside users. It is still the school's intention to continue the operation of existing uses on the site, including the gymnastics facilities and dance theater.

Mr. Gast states that, in his experience, students do not wander off campus during the day. He does not believe this will be a problem. The school will strongly urge students to drive, not walk.

The school will also be exploring the possibility of obtaining one or more 12 passenger vehicles which would carpool and pick-up students at designated areas.

Peak times, based on his experience at Baltimore Lutheran School, typically run from 7:30 a.m. to 8:10 a.m., and from 2:40 p.m. to 3:20 p.m. in the afternoon. There is a 10 minute movement one way or the other depending on school events and weather for those particular days. The school generally runs from 8:00 a.m. to 3:00 p.m. He would be willing to adjust the hours at Harford Lutheran School to accommodate public school bus traffic and/or farm equipment.

Harford Lutheran School had investigated other locations before entering into a contract for the purchase of the Millstad site. Its search began about 5 years ago, and considered from between 15 to 20 potential sites in the County. Extensive drawings were done on at least one other site to determine its feasibility. No other site was determined to be viable.

Next testified John A. Seitz, employed as a traffic engineer with Transportation Resource Group, Inc. Mr. Seitz was offered and accepted as a professional Traffic Operations Engineer.

In preparation for his report on the Harford Lutheran zoning request, Mr. Seitz examined other projects within the County and traveled its roads. He has visited the proposed site.

Mr. Seitz is of the opinion that the proposal, if allowed, would have a negative impact on the local traffic network. In explaining his position Mr. Seitz relied upon Protestant's Exhibit 13. He described Whitaker Mill Road as a "very narrow roadway, with a varying width." Measurements were from 17 to 19 feet in width. It has a 30 mile speed limit. Sight distances are limited at numerous locations on the road. One such location is the intersection of Millwood Drive. He was only able to observe vehicles traveling on Whitaker Mill Road (while he was sitting on Millwood Drive) for about 5 seconds, which he characterized as a poor sight distance. AASHTO standards require at least 7.5 seconds of clear intersection sight distance.

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Certain areas on Whitaker Mill contain very sharp curves. There is a sharp bend in the road before one approaches the one-lane bridge from the east. There are also limited sight distances in that area. Ring Factory Road on the east side of the one-lane bridge is also very narrow with sight obstructions. There are numerous advisory signs, including curve advisory signs, posted along Ring Factory Road.

He observed motorists exceeding the 30 m.p.h. speed limit in the area. There is not a lot of room to make decisions or to make maneuvers along the roadways. Vertical and horizontal sight distances are limited. The speed of younger drivers going to or leaving school will exacerbate existing problems. Younger drivers – ages 16, 17, 18, 19 – are drivers that on proportion cause the most accidents. The Harford County website contains statistics which show the greater propensity for accidents in the younger age category. Mr. Seitz quoted from the Institute of Traffic Engineers Safety Action Plan dated April 14, 2000 which stated ‘teenagers have the highest crash involvement rates per miles driven . . . immaturity and lack of driving experience are the main reasons.’

Mr. Seitz believes that a school which exists on a deficient road system will exacerbate the driving problems exhibited by younger drivers.

Most of the schools in Harford County are closer to major roadways than is the subject property. Those roads have wider lanes, wider shoulders, and other safety improvements to facilitate the movement of vehicles. Mr. Seitz believes that appropriate traffic should be maintained on appropriate roads.

Mr. Seitz agreed the proposed site is about a half mile away from both U.S. Route 1 and Maryland Route 152. Most other high and middle schools are either adjacent to Maryland State roadways, or within 500 feet. He believes that the proposed site is not as close in proximity as other schools are to major road networks.

Next testified Ellen Pons, who resides at 319 Old Joppa Road, Country Life Farm. Ms. Pons had taken photographs, which were described and introduced, of traffic along the roadways surrounding the subject property. These photographs include pictures of the horse vans which transport horses to and from Country Life Farm.

Next testified Lee Magness, who resides at 1201 Whitaker Mill Road, Duncale Farm. His farm basically surrounds the subject property on three sides. The farm has been in existence since 1685, and has been in and out of the Magness family since 1841. The farm consists of about 265 acres.

Mr. Magness believes that the request is an inappropriate use of the property, and directly interferes with the Magness farming operations. Prior to 1979 or 1980, the subject property was used as a camp, with children bused in and out. This did not create an issue with farm equipment. However, operations on the subject property then changed, with more hourly and daily traffic being generated. The proposal will only make this traffic worse.

Magness farm equipment tries to avoid being on the roadways at peak hours. Mr. Magness

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believes it will be inevitable that his equipment will be interfered with by the school traffic.

Mr. Magness stated that approximately 4 to 5 horses are kept on the farm, with a herd of about 50 cattle. Mr. Magness explained that an easement is located on the western edge of the subject site. This easement is used by Duncane farm equipment to access fields to the north. He also indicated that the one-lane bridge to the east over Winters Run is too narrow for almost all of his farm equipment. Accordingly, most equipment is forced to go west on Whitaker Mill Road. Mr. Magness stated that High Bridge Branch runs through the subject property, with wetlands on either side.

Mr. Magness' farm equipment cannot get into the road and out of the way very quickly. His equipment operates at an average of about 12 m.p.h. Mr. Magness is careful in operating equipment along the limited sight distances along Whitaker Mill and surrounding roads. Vehicles are constantly backed-up behind the farm equipment. While the equipment tries to stay to the side of the road, certain pieces of equipment will be over the center line. Oncoming traffic must pay attention. Mr. Magness also believes that more than twenty-five percent (25%) of the school traffic will come east along Whitaker Mill Road. Whitaker Mill Road provides the shortest distance to Harford Mall, Festival of Bel Air, and to Regal movie theater. The Town of Bel Air can be avoided by going that way.

Mr. Magness stated that a dry well had been drilled on his property. He is concerned that the Harford Lutheran operation will draw water out of the ground so as to adversely impact his and other wells in the area.

Mr. Magness believes that the proposed site is one of the worst sites possible. This site has a single point of entry only, which is directly adjacent to the western Magness farm access. The use will directly interfere with the Magness farm operations and a safety hazard is being created.

Next testified Scott Alexander who owns a horse transportation company known as Alexander Horse Transportation Company. Mr. Alexander frequently transports horses for Country Life Farm. At certain times of the year he may be at Country Life Farm as many as 3 or 4 times a day, especially during the period of February 15th to July 10th, which is breeding season. There are also many trucks other than his trucks which travel to Country Life Farm during this season.

Mr. Alexander's trucks enter the farm every which way. He has difficulties entering through the four-way intersection at Old Joppa Road and Whitaker Mill Road. Often times traffic is forced to back-up to let him through. Traffic must use shoulders of the roads, the roads are very narrow, very tight. Trees are very close and it is a dangerous situation. He travels about 15 m.p.h. in that area.

Mr. Alexander believes that the construction of a 300 student school would create a "very scary situation" for any truck or farm vehicle in the area. Mr. Alexander identified Exhibit D, number 10 as a photograph which shows his mirrors over the yellow line and over the white line. He described Whitaker Mill Road as extremely narrow. He transports horses valued from \$100,000.00 to \$500,000.00 and he cannot give way to vehicles. His truck must remain on the road in order to protect the horses. He is worried about younger children interfering with his vehicles on Whitaker Mill Road. He has never taken his vehicle across the one-lane bridge; he cannot cross that bridge. Mr. Alexander stated that other farm operations to which he travels require travel distance greater on rural roads than

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does Country Life Farm.

Next testified John Magness who resides at 901 Whitaker Mill Road. Mr. Magness has operated Duncale Farm since 1979. Mr. Magness has reviewed the Applicant's revised site plan. Mr. Magness had "marked-up" a copy of Applicant's site plan to show, in color, various site characteristics. These documents were admitted as Protestant's Nos. 16-A and B.

Mr. Magness believes that the deforestation of the site will adversely affect wildlife. Also, the existing vegetative buffer on the subject property helps assist in controlling fertilization and weed killing spray on the Magness farms. He also believes that run-off will increase due to the increase in impervious surface on-site. The noise from the construction of the school and its operation will be a bother to his cattle and horses. Trespassers come onto the farm and bother the livestock. The southeast corner of the subject property is wet, yet the Applicant is proposing a storm water management facility in that area. He believes this would cause pollution into his stream, which the livestock utilize.

Mr. Magness also described the Applicant's site plan as showing a distance of about 215 feet to 220 feet from the Applicant/Magness property line to the swimming pool on-site. However, that measurement is not correct. He used a tape and measured the distance and found it to actually be 137 feet. Accordingly, he does not believe the site plan accurately reflects what is on the ground, particularly with respect to the relative locations of the fence line and the swimming pool fence. Mr. Magness expressed concern that the storm water management pond could not be located as shown because of the improper measurements on the site plan.

Mr. Magness testified to known failed wells in the neighborhood, and low yield wells. He is concerned the proposal will impact water levels in the area, and will adversely effect Mr. Magness' ability to water his livestock.

Mr. Magness also runs farm equipment up and down Whitaker Mill Road. Tractors vary in width from 7 feet to 12 feet. His combine is 13.5 feet in width. Other farm equipment is of varying width. Hay bailers are up to 45 feet long. A combination of equipment, which he would typically tow, could be up to 70 feet long.

Mr. Magness often uses the roads to transport his equipment. He farms approximately 17 places other than the home farm. Mr. Magness uses the roads to transport farm equipment year round.

Use of the roads during heavy travel times cannot always be avoided, and there will be occasions when he must use the roads during times of heavy school use. He also believes that trying to get some of his equipment through the round-about will be difficult.

Mr. Magness cannot take his tractor and corn planters through the round-about located on Tollgate Road.

Next testified Michael Pons who resides at Country Life Farm. Mr. Pons described Country Life Farm as Maryland's oldest thoroughbred farm, begun in the 1930's. The farm is know nationally and internationally as a horse breeding operation. Clients are located all over the country, and in

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Canada and Jamaica. The farm breeds as many as 500 mares a season. Feed is brought in from across the country, including Colorado and Wyoming. The business requires a constant flow of goods and supplies into the property.

Mr. Pons believes that increased traffic will interfere with the farm's breeding operations. Specifically, school-generated travel will interfere with the transportation of horses to and from the farm. This will potentially affect revenue. Loud noises from the school property will tend to affect the well being of the valuable horses at Country Life Farm. He is worried about the trespassers, and possible damage to the buildings by those trespassers. Children and other people from the school should not be around the highly temperamental stallions which will be on his farm, and he worries about liability issues.

Country Life Farm has about a quarter to half mile of frontage on Old Joppa Road. Mr. Pons is also concerned about patrons of the Wal Mart store using Whitaker Mill and Old Joppa Road as potential cut-throughs. He feels that the proposal will disturb the rural atmosphere of his neighborhood. He believes other alternative sites are located in the county which have better access to roads.

Next testified Joseph Pons, Jr., also of Country Life Farm. Mr. Pons offered into the record a copy of "Country Life Diary" authored by Mr. Pons. Mr. Pons testified to the national standing of Country Life Farm. He and his family are proud of the contribution of Country Life Farm to Harford County and the State of Maryland.

For the Applicant was recalled C. Dudley Campbell. As a result of earlier testimony concerning the boundary lines of the subject property, as shown on Applicant's Exhibit No. 19, Mr. Campbell had conducted an additional investigation. That investigation resulted in the preparation of an overlay, accepted as Applicant's Exhibit No. 20.

Mr. Campbell explained that the site plan shown as Applicant's Exhibit No. 19 was prepared from a deed of record in the Harford County Land Records. The deed was offered and accepted as Applicant's Exhibit No. 21. No boundary survey has been performed by Mr. Campbell. He explained that a Harford County G.I.S. map is essentially an overlay of the current tax maps and aerially flown topography. Surveys are not performed to determine the location of actual property lines.

Mr. Campbell explained he had reviewed the testimony of Mr. Dillon and Mr. Magness and had attempted to draw on his overlay the property line as described by Mr. Dillon and Mr. Magness. Mr. Dillon believed the property line was off approximately 20 feet. Mr. Campbell, after looking at this testimony and his site plan and the overlay prepared by Mr. Dillon, does not agree that the line as suggested by Mr. Dillon and Mr. Magness is, in fact, a correct line. However, if it were correct, it would impact the storm water management pond which is located in the southeast quadrant of the property. If the Protestants' testimony is correct and the storm water management pond had to be relocated, Mr. Campbell believes it could, in fact, be located out of the setback area.

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The storm water management facility has not yet been designed, but is typically designed preliminary to the DAC process. No buildings would be moved if the Dillon/Magness line were found to be correct. Approximately 8,700 square feet of septic reserve area would be lost. This will result in only a very small reduction in the total septic reserve area. There would be adequate septic reserve area remaining to handle a 300 student school.

Mr. Campbell understands the required side yard setback is two times the height of the tallest structure. The tallest structure would be 45 feet, this would result in a required side yard setback of 90 feet. Using the Dillon/Magness line Mr. Campbell finds the side yard setback can be complied with. The nearest building would be 101 feet from the Dillon/Magness line.

Upon cross-examination, Mr. Campbell identified a fence line between the subject property and the Magness property. He indicated that Mr. Magness referred to the fence line as being his property line. He does not dispute the fact that the Magness family has been using its property up to the fence line for the last 20 to 30 years. Mr. Campbell again stated that the septic reserve area would be reduced from 209,225 square feet to 200,495 square feet.

The Harford County Health Department determined the size of the septic reserve area based upon information depicted on Mr. Campbell's plan for 300 students.

Mr. Campbell was asked to explain, if he could, why Mr. Dillon could not line up the aerial photograph with the road and corners of the site plan as prepared by Mr. Campbell. He explained that his Exhibit No. 19 was a "collage" of information from the Health Department, Harford County G.I.S., and previous engineering plans. Exhibit 19 is a pictorial representation and no field work had been done to determine the actual location of structures or lines shown thereon. Mr. Campbell's company determined that Mr. Magness' description of 137 feet from the pool to his fence was accurate.

In discussing his design of the storm water management facility, Mr. Campbell stated that he has not yet determined the location of the water table in the area. The storm water management facility must be above the water table. He has not done any field work to determine if the design which he has preliminarily proposed for the property will be feasible. The final design of the storm water management facility will be reviewed by the State of Maryland Soil Conservation Department and Harford County. The storm water management facility is located within the 150 foot stream buffer. The relocated storm water management pond, which would be necessitated if Mr. Magness' opinion of the location of the property line is correct, would result in more of the storm water management facility being within the Natural Resources Buffer Area.

Mr. Campbell stated he had not yet defined the wetlands on-site. The storm water management facility cannot be placed in a wetlands area. If wetlands are found, it is possible that the storm water management facility would be relocated. Furthermore, the State of Maryland requires a 25 foot buffer along all wetlands. A storm water management facility cannot be placed in the State buffer.

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Mr. Campbell also stated that a Ground Water Appropriation Permit will not be required if ground water appropriations were less than 5,000 gallons per day. He verified that his letter of September 7, 2005 projected waste water flow to be 4,950 gallons. He believes that the 15 gallons per student for 300 students includes showers.

Upon redirect, Mr. Campbell stated that if a Ground Water Appropriation Permit were necessary one would be applied for by the Applicant. The required septic is actually 105,040 square feet of absorption area, or about half of what is shown on the plan.

If unable to construct the storm water management facility as shown on the plan the facility would either be relocated or it would be divided into multiple facilities. If this would result in a substantial change to the plan Board of Appeals review would be required.

Mr. Campbell then stated that the Natural Resources District shown on his drawing (December 7, 2005) is 150 feet from the center line of the stream on either side. That would include whatever buffers Harford County deems necessary.

An existing sewage pump station is located on the property and shown south of the swimming pool. When the school is built the pumping station will be abandoned and relocated closer to the actual school building.

Mr. Campbell does not know if additional wells will be required on-site.

Next for the Applicant testified Frederick J. Faulkner, an environmental sanitarian program manager with the Harford County Health Department. Mr. Faulkner was offered as an expert in environmental health.

Mr. Faulkner is aware that approximately 10 years ago there was found to be an on-site failing waste disposal system. To his knowledge no current Health Department violations exist. The current sewage system is designed to accommodate the existing uses. It is designed, in fact, to accommodate a greater flow than is generated by existing uses. The existing system was designed to handle over 11,000 gallons per day.

As a rough estimate Mr. Faulkner had determined there to be approximately 105,040 square feet of absorption area on-site. He has determined that the capacity of that area to be in excess of 84,000 gallons. As the State requires the site handle the initial sewage system installation and two future repairs, Mr. Faulkner accordingly computed that the area has the capacity to handle 28,000 gallons of waste water a day, roughly. The numbers will be recalculated more precisely as part of a study that would be required if the system exceeds 5,000 gallons per day. In that event additional studies will be necessary. Those additional studies would include a joint review between the Harford County Health Department and the Maryland Department of the Environment. If waste water exceeds 5,000 gallons a day the Applicant will be required to secure a Ground Water Discharge Permit from the Maryland Department of the Environment. The system would then be monitored on a regular basis.

Mr. Faulkner agrees that the September 7, 2005 document which he received from Bay State

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Land Services does not include the 15 gallons per student per day which would be generated if showers were used. Accordingly, shower facilities will add 10 gallons per student, which would exceed the 5,000 gallons per day. This would require additional review by the Maryland Department of the Environment and the imposition of large system guidelines. His professional opinion, however, is that the proposed reserve area is sufficient to accommodate the student population of 300 students plus the existing uses on-site.

Mr. Faulkner is familiar with the well on the subject property. It has a yield of 12 gallons per minute. The well is considered a transient, non-community water supply. Quarterly reports are made to the Harford County Health Department. If a well exists in the northwest corner of the property it must be abandoned. A 25 foot radius is required to be shown around an abandoned well. The withdrawal of water for the proposed use from the well on-site would require State review. A Ground Water Appropriations Permit would be necessary.

Mr. Faulkner believes that anywhere from 3,000 to 3,500 gallons a day will be withdrawn from the well. The size of the well appropriation would be large but not unreasonable. Mr. Faulkner's opinion is that approximately 80% of the water that is pulled out of the well is recycled back through the septic system.

Mr. Faulkner is familiar with the letter from the Maryland Department of the Environment concerning wells located around Camp Millstad and the wells that have been drilled over the past 30 years. The documents reveal that 14 wells have been replaced, which is about 4% of the total. This does not seem to be a significant number to Mr. Faulkner. Based on this information Mr. Faulkner does not believe that the proposed school will have any adverse impact on the water supply or surrounding wells.

Upon cross-examination Mr. Faulkner explained that a Ground Water Appropriation Permit is required of all commercial sites and any subdivision sites of 10 lots or more. A Ground Water Discharge Permit is required of 5,000 gallons average daily flow.

Mr. Faulkner reiterated that the sewage system was originally designed for 11,000 gallons per day. At that time it was anticipated that the large building on-site (The Great Hall) would be used as a banquet facility, having 250 seats at 25 gallons per seat. As far as he knows that plan never went into effect.

Mr. Faulkner has no personal knowledge of any dry wells in the vicinity of the subject property.

Next testified Kenneth Schmid for the Applicant. Mr. Schmid was previously offered and accepted as an expert traffic engineer. Mr. Schmid stated that his original traffic impact study, accepted as Applicant's Exhibit No. 12, was based on the 500 student capacity originally applied for in this case.

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Mr. Schmid identified, as Applicant's Exhibit No. 22, a revised traffic report based upon a student enrollment of 300.

Mr. Schmid stated that the Wal Mart store, approved for U.S. Route 1 in Fallston, is not included in the study as Wal Mart had not yet received the level of approval required to be considered as a background development in the analysis for the Harford Lutheran School proposal. Until the off-site road improvements such as those associated with the Wal Mart project are designed and bonded through an Access Permit with the State Highway or Harford County, a development is not considered to be approved to the point where it needs to be considered as a background development. He has confirmed the status of the Wal Mart project with the Harford County Department of Planning and Zoning.

Safety is not a specific factor which is included in Mr. Schmid's traffic impact study. However, safety is something which he reviewed in the course of his being involved in the study. His study reviewed the capacity levels of key intersections involved in his study. If those key intersections were in a failed condition that could not be mitigated, he would consider this to be a safety problem. However, the intersections around the site were at an acceptable level of service, with the exception of U.S. Business 1 and Old Joppa Road. That intersection can be successfully mitigated.

Mr. Schmid has had discussions with the County concerning accident rates along Whitaker Mill Road, and recent improvements to Old Joppa Road in terms of overlays, minor widening and shoulder and ditch improvements.

Mr. Schmid found no data which showed him that accidents were being caused because of the limited sight line.

Mr. Schmid identified a sight line problem coming out of the Millwood subdivision, but he does not believe it is causing an adverse safety problem as the accident data does not support such a finding.

Mr. Schmid further stated that Mr. Seitz's reliance upon the ASHTO's guidelines was not appropriate. The ASHTO manual is not to be used to evaluate existing roads.

Mr. Schmid has received traffic accident data from the State Highway Administration for the corridor of Whitaker Mill Road from Old Joppa Road around the one-lane bridge and approximately another 200 feet or 300 feet up the road. This data was for a period of January 1, 2002 to December 31, 2004. Mr. Schmid found one concentration of accidents at the intersection of Old Joppa Road and Whitaker Mill Road in the year 2002. As a result the County switched the intersection from a two-way stop-controlled intersection to a four-way stop-controlled intersection. From that time there has been only one reported accident.

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The intersections which Mr. Schmid studied in his traffic report were identified to him by Harford County. The one-lane bridge over Winters Run was not an intersection required by the County to be studied. However, he has looked at the one-lane bridge and does not see a capacity problem or accident issue with the bridge. If an accident pattern develops, sight lines could be cleared and signage could be enhanced.

The planned improvements at Old Joppa Road and U.S. Route 1 would help the right turning traffic from Old Joppa Road heading into Bel Air. This would prevent the traffic from being delayed by the occasional left turn that occurs in the southbound direction onto U.S. Route 1. Mr. Schmid stated that the left turn movement was not a movement that occurred a lot, especially not during peak hours. The right turn lane will only mitigate the impact that has been calculated for the school and will leave the intersection in a better situation than exists today.

The Harford County Department of Public Works supports the location of the round-about.

Mr. Schmid, addressing a questions concerning the ability of emergency vehicles to traverse the round-about, stated that he has not heard of any problems with emergency vehicles passing through round-about.

Studies have shown a 68% decrease in total accidents on average when a round-about is placed into an intersection, according to Mr. Schmid. He stated, however, that there had been no reported accidents at the subject property on Whitaker Mill Road.

Mr. Schmid stated that neither the testimony of Mr. Seitz nor Mr. Hicks changed Mr. Schmid's opinion.

Mr. Schmid characterized Whitaker Mill Road and Ring Factory Road as a typical rural type, a minor collector road, with limited shoulders and not built to any specific design standard. It has no sidewalks, and goes through horizontal and vertical alignment changes. Pavement widths vary from 17 feet to 20 feet. Mr. Schmid concluded from a review of the accident data that the type of accidents which occur are fairly typical of this type of road corridor and at the frequency one would expect.

Mr. Schmid is of the opinion that the proposed use at the location proposed would not result in any dangerous traffic impact which would be greater than that inherently associated with the same use located elsewhere within an agricultural zone.

Upon cross-examination Mr. Schmid indicated that the traffic round-about had not yet been designed and he did not know its width.

Also on cross-examination, Mr. Schmid agreed that if the Wal Mart is approved and if it were added as a background development, it would certainly have some impact on some of the intersections.

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Lee Cunningham resumed his testimony as an expert land and transportation planner. Mr. Cunningham had reviewed Applicant's Exhibit 19, the revised site plan. His prior opinions remain valid. The proposal continues to meet all zoning requirements for a school at the proposed location. Mr. Cunningham has had an opportunity to review the overlay prepared by Mr. Campbell showing the two boundary lines on the east side bordering the Magness property. He believes that the present plan continues to meet the side yard setback requirements of the Code. He believes that 45 feet for a two-story building is a generous allocation. However, a two-story building could be significantly less than 45 feet.

Mr. Cunningham did not agree with Mr. Dillon's conclusion that the proposed use can have an adverse impact on persons living and working in the immediate area. The intensity proposed on the site is significantly less than possible density allowed by the Code. Furthermore, the facility is to be located in an area that has rural roads similar to other rural roads in Harford County. It is a permitted special exception use in an agricultural district. It will not have a negative impact on persons living and working in the area and the kind of facility it is being located on are typical of those facilities in rural areas.

The testimony of the Protestants does not change his opinion concerning lack of adverse traffic impact. He did not find a significant number of accidents occurring at or near the site within a two year period. He does not believe Whitaker Mill Road is dangerous. Whitaker Mill Road is a minor collector road. He does not accept the Protestants' characterization of people who may be traveling to and from Harford Lutheran School as 'transient' traffic. Transient traffic is traffic that is on the roadway incidentally, not specifically using it for a regular purpose.

He does not believe that the proposed use will adversely effect the ability of emergency service vehicles to access the subject property through the surrounding community. There is nothing in the accident data available to him which indicates that traffic on the road is causing an unsafe condition or is inhibiting the flow of any emergency service vehicles that may be needed on the roadway at any given time.

Mr. Cunningham continues to believe that the Applicant's proposal conforms with the Harford County Master Land Use Plan. The proposal, being a permitted special exception in the AG District, legislatively has been deemed to be compatible with other uses in the AG District. Accordingly, it does not represent a threat to the preservation of the rural character of the neighborhood. In addressing the Master Plan he stated;

“ . . . the schools and libraries that are being referenced in this portion are public schools and, of course, public libraries. There is a reason that public schools and public facilities would be directed toward the development envelope area.”

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He states the basis of his opinion as;

“ . . . any facility that is provided by the County, the State or Federal Government is not subject to the same restrictions and the same conditions as a special exception use. It has no conditions associated with it.”

Mr. Cunningham states that the Master Plan speaks of public services rather than private schools.

Mr. Cunningham acknowledged that he was not a certified professional traffic operations engineer, as is Mr. Seitz. Mr. Cunningham could give no further support for his opinion that the Harford County Master Land Use Plan addresses “public facilities, rather than private facilities”, as he testified to earlier.

Nest testified, again, Anthony McClune, Deputy Director of the Department of Planning and Zoning. Mr. McClune was asked to address the issue of the disputed easterly lot line. Mr. McClune stated that if the line is adjusted it still shows a 101 foot setback to the proposed school building. The structure would continue to meet the required setbacks for a special exception. If the plan were revised to show a property line as suggested by the neighbors Magness, there would continue to remain a roughly 56 foot separation between the parking area and property line and an adequate area for the planting of a vegetative buffer strip. Mr. McClune stated that the Department’s recommendations remain the same. Mr. McClune did not do an independent determination of the property line. His testimony is that, even if the neighbors’ testimony as to the actual property line is correct, the Applicant can still meet all applicable setbacks.

APPLICABLE LAW:

Section 267-51 of the Harford County Development Regulations (Code), Purpose states:

“Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.”

Section 267-52 of the Code, General Regulations states:

“A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.

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- B. *A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.*
- C. *Extension of any use or activity permitted as a special exception shall require further Board approval.*
- D. *The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.*
- E. *In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.”*

This special exception request is governed by Section 267-53C(7) of the Code:

“C. *Institutional uses.*

(7) *Schools, colleges and universities. These uses may be granted in any district, except the LI and GI Districts, provided that:*

(a) *Schools, colleges and universities which offer any general academic instruction at levels above the eighth grade must have:*

- (1) *A parcel of at least three acres. An additional eight hundred seventy-five square feet of parcel area will be required for each student in excess of fifty.*
- (2) *A parcel frontage of at least three hundred feet.*
- (3) *A front yard depth of at least fifty feet, a side yard depth equal to at least two times the height of the tallest institutional building located on the parcel which is approximate to the side lot line and a rear yard depth of at least fifty feet.*

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(b) *Kindergartens must have:*

- (1) *A parcel area of at least twenty thousand square feet per fifteen students or fraction thereof.*
- (2) *A parcel frontage of at least one hundred feet.*
- (3) *A front yard depth of at least forty feet, a side yard depth equal to at least the height of the tallest institutional building located on the parcel which is proximate to the side yard and a rear yard depth of at least forty feet.*

(c) *All other educational institutions must comply with the following:*

- (1) *Where the maximum attendance at any one time does not exceed forty students, such institution must have:*
 - (a) *A parcel area of at least twenty thousand square feet per fifteen students or fraction thereof.*
 - (b) *A parcel frontage of at least one hundred fifty feet.*
 - (c) *A frontyard depth of at least forty feet, a side yard depth equal to at least the height of the tallest institutional building located on the parcel which is proximate to the side yard and a rear yard depth of at least forty feet.*
- (2) *Where the maximum attendance at any one time exceeds forty students, such institution must have:*

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- (a) *A parcel area of at least three acres, plus seven hundred square feet for each student in excess of sixty.*
- (b) *A parcel frontage of at least two hundred feet.*
- (c) *A front yard depth of at least fifty feet, a side yard depth equal to at least two times the height of the tallest institutional building located on the parcel which is proximate to the side yard and a rear yard depth of at least fifty feet.*
- (d) *School buses shall be garaged or shall be stored in an area to the rear of the main building and adequately screened.*
- (e) *A buffer yard ten feet wide shall be provided along the boundary with an adjacent residential lot.*

Section 267-9I, Limitations, Guides and Standards is also applicable to this request and will be discussed in further detail below.

STANDARD OF REVIEW:

It is important to consider the nature of the relief requested. Harford Lutheran is seeking a special exception to permit a school offering general academic instruction at levels of grades 6 through 12, to be located in an Agricultural District.

While this request required Board of Appeals approval, clearly defined standards govern its review:

“Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part I. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part I.” (See Code Section 267-51)

The initial determination that this special exception is compatible with permitted uses has, in

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fact, been made by the Harford County Council when it legislatively decided that this school use is to be treated as a special exception. While it is necessary to comply with the specific statutory criteria of Code Section 267-53C(7), Schools, Colleges and Universities, it is expected the use will be permitted once these criteria are met. See Eastern Outdoor Advertising v. Mayor and City Council of Baltimore, 120 Md. App. 294 (1999).

Harford Lutheran's request must finally be required in light of Code Section 267-9I, Limitations, Guides and Standards, which provides the framework for addressing a multiple of broad or real and potential impacts from any proposed land use request brought under the Code. The Board may impose conditions for limitations upon any approval with respect to the considerations delineated in that section. If, as a result of this process, including the possible imposition of conditions, there is no finding of adverse impact on the public health, safety and general welfare, or dangerous traffic conditions or jeopardy to the lives or property of people in the area, then the Limitations, Guides and Standards section of the Code may not be used to deny the application.

While adverse impacts must also be reviewed, it is not a question of whether or not the proposed use would have some adverse impact on the surrounding area, as that is the nature of special exceptions. See Dale Lucas v. People's Counsel of Baltimore County, 147 Md. App. 209 (2002). Instead, the test is whether the adverse impacts of the granting of the special exception will be greater or more detrimental at the subject location than if located elsewhere within the same zone. See Schultz v. Pritts, 291 Md. 1 (1981).

It is in light of these specific and general standards that the testimony and evidence must be considered.

DISCUSSION:

Harford County is a prosperous, sought after area in which to live. While increasingly urbanized, the County still projects a somewhat rural identity. In fact, its rural virtues are becoming increasingly scarce.

However, the area of Whitaker Mill, Old Joppa Road and West Ring Factory road continues to retain certain typical, rural features. It has a secondary road system, with narrow, winding roads and areas of limited sight distance. It enjoys large, extensive agricultural uses. It is characterized by rolling terrain, a major stream valley and a rare, one-lane bridge.

Actually, residents of this area are no more protected than residents of any other portion of Harford County from pressure for residential, business and, most pertinently, institutional development. This pressure will only increase in the future, and the Board of Appeals will continue to be called upon to make sometimes difficult judgments.

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Before addressing the central issues in this case, it is important to comment on the roles of the Board of Appeals and the Development Advisory Committee (“DAC”). Throughout the hearings in this case repeated mention was made of DAC review of various issues of the Applicant’s proposed use. For instance, Kenneth Schmid, traffic engineer, indicated that DAC would review the traffic study and that, in fact, a new traffic study will be required which would take into account additional uses in the area. Anthony McClune of the Department of Planning and Zoning reiterated that DAC will review a final traffic study to include additional projects.

Repeatedly the engineer for the Applicant stated that DAC would be reviewing various issues of the project, including landscaping, site plan issues, fire suppression issues, water and sewer calculations, storm water management calculations, and the location of various improvements.

While DAC has a statutory role in this and other land use applications, its authority is more narrowly drawn than that of the Board.¹ The Board of Appeals has, among other powers, the express power to deny an application.

In order for the Board of Appeals to properly function it must have before it the Applicant’s complete case, with all pertinent issues addressed. For instance, while the Applicant asserted that if new development proposals come online which would generate traffic then those additional uses, with a newly revised traffic study, would be reviewed by DAC. However, it is the Board of Appeals which has the power to approve or deny a special exception. It is according disingenuous to suggest that all pertinent information need not be submitted to the Board because another substantive review will take place at another date, in another forum. The Board, not DAC, is charged with the power to approve or disapprove special exceptions. This power is clearly defined at Section 267-52 of the Code:

“Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.”

This discussion on the various responsibilities of the Board and DAC is important in light of the holdings below.²

¹ “The Development Advisory Committee (DAC) is established to advise the Director of Planning and Zoning regarding major subdivisions and other large scale development.” See § 5-03 of Subdivision Regulations.

² It is, of course, only before the Board of Appeals that opponents, or even neutral parties who may have an interest in more fully understanding a particular application, have the right of cross-examination and to present witnesses and evidence. The right to these procedural safeguards does not exist at the DAC level. This is merely an additional, not the sole, reason for emphasizing the importance of proceedings before the Board of Appeals, and of the necessity for a full presentation of the facts and evidence at the Board level.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The request must, initially, comply with the specific requirements of Code Section 267-53C(7), Schools, Colleges and Universities.

This section allows a school to be granted in any district, except the LI and GI district. The property is zoned AG/Agricultural. The other requirements of this section are as follows:

- (a) *Schools, colleges and universities which offer any general academic instruction at levels about the eight grade must have:*
 - (1) *A parcel of at least three acres. An additional eight hundred seventy-five square feet of parcel area will be required for each student in excess of fifty.*

The subject property is approximately 39.375 acres in size. The property accordingly far exceeds the minimum requirement for a 300 student school.

- (2) *A parcel frontage of at least three hundred feet.*

The subject property has approximately 2,000 feet of road frontage.

- (3) *A front yard depth of at least fifty feet, a side yard depth equal to at least two times the height of the tallest institutional building located on the parcel which is approximate to the side lot line and a rear yard depth of at least fifty feet.*

The Applicant meets these requirements.

- (b) *Kindergartens must have:*
 - (1) *A parcel area of at least twenty thousand square feet per fifteen students or fraction thereof.*
 - (2) *A parcel frontage of at least one hundred feet.*
 - (3) *A front yard depth of at least forty feet, a side yard depth equal to at least the height of the tallest institutional building located on the parcel which is proximate to the side yard and a rear yard depth of at least forty feet.*

This section is not applicable. The proposed request is for grades 6 through 12.

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(c) *All other educational institutions must comply with the following:*

(1) *Where the maximum attendance at any one time does not exceed forty students, such institution must have:*

(a) *A parcel area of at least twenty thousand square feet per fifteen students or fraction thereof.*

(b) *A parcel frontage of at least one hundred fifty feet.*

(c) *A front yard depth of at least forty feet, a side yard depth equal to at least the height of the tallest institutional building located on the parcel which is proximate to the side yard and a rear yard depth of at least forty feet.*

This section is not applicable as maximum attendance will exceed 40 students.

(2) *Where the maximum attendance at any one time exceeds forty students, such institution must have:*

(a) *A parcel area of at least three acres, plus seven hundred square feet for each student in excess of sixty.*

The subject parcel meets this requirement.

(b) *A parcel frontage of at least two hundred feet.*

As stated above, there is sufficient road frontage on Whitaker Mill Road to meet this requirement.

(c) *A front yard depth of at least fifty feet, a side yard depth equal to at least two times the height of the tallest institutional building located on the parcel which is proximate to the side yard and a rear yard depth of at least fifty feet.*

This requirement can be met.

(d) *School buses shall be garaged or shall be stored in an area to the rear of the main building and adequately screened.*

If school buses are utilized, the Applicant can satisfy this condition based on the site plan.

(e) *A buffer yard ten feet wide shall be provided along the boundary*

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with an adjacent residential lot.

There are no adjacent residential lots.

While the proposal, as a special exception, enjoys a presumption that it is compatible with other principle permitted uses, and while it meets all of the specific requirements of Section 267-53C(7), the proposal must nevertheless be reviewed in light of the Limitations, Guides and Standards, Section 267-9I, of the Code. These factors are set forth and addressed as follows:

(1) *The number of persons living or working in the immediate area.*

No evidence was presented that the area surrounding the site hosts any sort of substantial employment levels. While Duncale Farm and Country Life Farm provide some employment opportunity, there is no evidence that the proposal would significantly impact in any way these employment opportunities. Furthermore, aside from traffic issues, addressed below, there is no evidence that the number of people living in the area, which is a generally rural area with scattered single family homes and a few older subdivisions, would either cause the proposal to be adversely impacted or be adversely impacted, in turn, by the proposal.

(2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

Traffic conditions, including traffic impact, are a major concern of the residents and, indeed, are highly legitimate issues given the potential for adverse impact upon not only quality of life, but also upon basic safety. There will be little if any pedestrian traffic generated by the use. Mr. Gast testified that very few, if any, students will actually walk to and from the property. No readily accessible or desirable off-campus areas exist to which students could walk to and from the subject property. While there was fear expressed that students would impact Country Life Farm, it is found that the worries of students adversely interacting with livestock, including expensive mares and stallions, are simply not reasonable. These middle and high school students will generally remain on the school grounds, under supervision, and there is no reason to believe they will pose a real threat to the Country Life Farm livestock.

No proposed roads were identified.

However, general traffic conditions, once the school is built, will deteriorate. There was no dispute that traffic to and from the school, at least during peak morning and evening hours, will be significant for what one witness described (in addressing Whitaker Mill Road) as an “improved farm path”. Whitaker Mill Road at its east end is accessed by a one-lane bridge. The two roads accessing the bridge, one to the east and one to the west, are hazardous in the winter time.

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Furthermore, Whitaker Mill Road is a narrow, winding, paved road with no shoulders. It has the appearance of a lane which at one time in Harford County's past meandered between farms and, over time, became somewhat improved. While witnesses for the Applicant testified it was similar to other rural roads in Harford County, it is clearly a road which has seen little physical change or improvement over many years.

Nevertheless, despite the vehement and unanimous concerns of the neighbors on Whitaker Mill Road, the Applicant persists in its representations that Whitaker Mill Road is a typical County rural road, one capable of supporting the traffic to and from the proposal school without adverse impact to the neighbors or other users of Whitaker Mill Road. While the Applicant admits increased traffic would result, it intends to mitigate the impact of that traffic at the intersection where service is already failing, being the Old Joppa Road and U.S. Route 1 intersection. The construction of a roundabout at the entrance of the school on Whitaker Mill Road will also help increase traffic flow and movement at that area, according to the Applicant.

Despite this major disagreement between the neighbors and the Applicant concerning the impact of traffic on Whitaker Mill Road and the other, connecting rural roads, certain findings of fact can be made:

1) Cars leaving the subject property can go one of four ways. The first is over the one-lane bridge to the east. The second is west on Whitaker Mill Road to Route 1 and a signalized intersection. The third is Old Joppa Road to Mountain Road, which requires passage along a narrow, winding, shoulderless road similar to Whitaker Mill. The fourth is along Old Joppa Road to U.S. Route 1. Old Joppa Road is, also, a very narrow, tree lined, roadway. An additional lane will be installed on Old Joppa Road to U.S. Route 1 to help eliminate back-ups for people making left and right turns. In fact, as witnesses testified, it is difficult at the best of times to make a left hand turn onto U.S. Route 1 from Old Joppa Road. Furthermore, this intersection will continue to fail, even with the modification proposed by the Applicant.

2) Emergency vehicles will not access the subject property, and the surrounding neighborhoods, over the one-lane bridge on Whitaker Mill.

3) Whitaker Mill is a rural collector road, with limited sight distances. Traffic will increase as a result of the school proposed. Increased traffic will jeopardize the safety of residents and other motorists given the nature of these roads.

4) No other middle or high school was identified by any witness as being located along a rural collector road.

5) The proposed school will be utilized after hours and its facilities will be offered to other groups, according to Mr. Gast. Visiting groups and clubs may also use the property. Spectators normally would attend some or all of these events. The traffic impact analysis only included statistics on student and staff use and did not include traffic statistics for any of these other potential uses. These individuals and groups will increase the impact on the road network.

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6) A round-about will be constructed on the westerly side of the school similar to, if not exactly the same as, as least two other round-about constructed in the vicinity of schools in Harford County. The proposed round-about will actually adjoin the school entrance.

7) Lastly, a Wal Mart store is to be built on U.S. Route 1, one to two miles driving distance from the proposed Harford Lutheran School. Harford County did not require this proposal to be included within the scope of the proposed traffic study, and it was not included in the traffic impact analysis of Mr. Schmid. Of course, nothing would have prevented the Applicant from including the Wal Mart projected traffic counts in its traffic impact analysis. Mr. McClune testified that the Wal Mart store had actually been approved sometime before the Staff Report had been prepared, and before the commencement of these hearings, and yet a revised traffic analysis was neither requested nor prepared.³ That the Applicant did not include this potential impact simply defies understanding. Whitaker Mill Road and Ring Factory Road are used as a “cut-through” for residents heading from Bel Air to U.S. Route 1 south and Mountain Road as was suggested by neighbors and was not rebutted by the Applicants. That cut-through traffic will increase by the construction of a Wal Mart on U.S. Route 1 south of Benson seems reasonable to assume. The traffic impact from Wal Mart on all the surrounding roads may be significant. However, no numbers or calculations were presented, there was no suggestion made as to what the actual impact would be, no opinion was rendered as to how the level of service will change, no suggestion was made as to how traffic would be impacted on Whitaker Mill Road, and how the school traffic would itself contribute to the impact or be impacted by the Wal Mart intrusion. One is left to only guess, speculate and wonder what impact the Wal Mart use, with its 7,000 to 8,000 trips per day (according to Mr. Schmid) will have on the road network.

For reasons set forth above in this opinion, the simple, but repeated suggestion that the impact of Wal Mart (and other approved projects) will be reviewed in a subsequent traffic impact study at the DAC level is not satisfactory. To rely upon that assertion would constitute an abdication by the Board of Appeals of its review responsibility.

Accordingly it is found, after an evaluation of the above facts and findings, that traffic conditions which will result if the proposed use is granted will be undesirable, will adversely impact the health, safety and welfare of residents and users of the property as limiting the response time of emergency equipment, and will jeopardize the safety of motorists who will continue to use the rural road networks in this area together with the increased motorists attracted to the proposed school. It is further found that the approval of the use will result in dangerous traffic conditions.

It is further found that the intersection at Old Joppa Road and U.S. Route 1 is a dangerous intersection, and the mitigation proposed by the Applicant will do nothing to address the threat to motorists posed by that intersection. At best, the creation of an additional lane will decrease back-ups and wait time, and perhaps alleviate some of the frustration of motorists going out on U.S. Route 1 from Old Joppa Road. However, it will not change the unsafe characteristics of that intersection, which will see an increase in use as a result of the new school.

³ A near-by large townhouse development had also been approved prior to the hearings but, again, a revised traffic analysis was neither requested nor submitted.

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Furthermore, it is found that the failure to project the change in traffic (if any) along Whitaker Mill Road resulting from the construction and operation of a Wal Mart store on U.S. Route 1, especially given the uncontradicted testimony that Ring Factory and Whitaker Mill roads is used as a cut through from Routes 24 and 924, results in an inability to properly gauge the impact of the proposed special exception on the road networks in the area, and on the intersections involved, and on the safety of motorists. One is simply left to speculate and wonder how the traffic will increase, if at all, once the Wal Mart is up and operating, and how the traffic to be generated by the school will somehow interact with the Wal Mart traffic. The Board of Appeals cannot perform its duty if it is left to speculate upon such an important matter.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

There is no evidence presented of a detrimental fiscal impact on the County if the proposal were granted. However, the future orderly growth of the neighborhood and community may be detrimentally impacted by the existence of the increased traffic from the proposal, as discussed above.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

There is no evidence that the proposed use would create any adverse impact as a result of any of these potential consequences of the use.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

Trash collection will be handled by a private firm. There was much discussion concerning sewage disposal and water use, since both will be on-site. However, despite the generalized concerns of the neighbors concerning impact on the water levels, and the potential impact of sewage disposal, there was no substantive evidence presented that, provided Maryland Department of the Environment regulations are complied with, there will be any detrimental impact from sewage or water use. The expressions of the neighbors in this regard are speculative at best, and are generalized expressions of concerns of fear, not of fact.

However, it is found that the proposed school, and certain of its surrounding residences, can be served by emergency vehicles entering from the west only, as these vehicles cannot use the one-lane Whitaker Mill bridge. Accordingly, it is found that the increased traffic on these roadways to be created by the proposed school will adversely affect the ability of emergency vehicles to timely respond to emergency situations.

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- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

There is no evidence that the proposal is inconsistent with generally accepted engineering principles and practices.

There is, however, evidence that the proposal is not consistent with good planning principles. Clearly, it is good practice to follow, or at least pay attention to, the County's Master Land Use Plan. This was not done, as discussed in more detail below.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

There is no evidence that any such structures of public use would be detrimentally impacted by the proposal.

- (8) *The purposes set forth in this Part I, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

Differing opinions were expressed concerning compliance with the Harford County Master Land Use Plan. It is, however, found, after a review of the pertinent Master Plan sections, that the 2004 Master Land Use Plan for the Joppa/Joppatowne community envisions that the proposed use, and similar uses, not be built at this location. The 2004 Master Plan states in part:

"Protection of the character of the Joppa rural area is strongly supported . . . schools, libraries and other such facilities will be directed south of I-95 toward U.S. 40 . . . "

Nevertheless, despite this clear direction the Applicant's expert argued that the proposal was not inconsistent with the Master Land Use Plan ("Plan") as the proposed school is a private school, whereas the Plan addresses public schools. That observation is simply not supported by the Plan. The Plan is clear in its guidance that this and similar institutional uses not be permitted in this area.

Many neighbors actually participated in the planning process which arrived at the Joppa portion of the Plan. Well articulated and clear reasons for the creation of this language in the Plan were given. Contradicting this testimony was that of Applicant's land use expert, referred to above. The Applicant's land use expert's opinion in this regard is rejected.

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What is more interesting, perhaps, is the position of the Department of Planning and Zoning which seemingly disregards the guidance of the Plan. While the Plan is to be seen as a guide only, at least some effort should be made to explain why this provision should be ignored. In this the Department of Planning and Zoning failed. Indeed, and without any credible basis, the Staff Report states that the proposal is consistent with the 2004 Master Land Use Plan. The Department has not attempted to explain the inconsistency in any credible form, or to counter the well stated observations of the neighbors and the neighbors' expert witnesses, that the Plan is being violated.

It is accordingly found that the proposal is inconsistent with the Harford County Master Land Use Plan, and no clear reason has been given to explain why this special exception should be allowed in the face of this inconsistency.

(9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

The Applicant presented evidence that the proposed use would have no adverse environmental impact on the area. The Applicant chiefly relied upon the requirement that the Department of Natural Resources will grant a Water Appropriations Permit and will monitor ground water use in addressing the Protestants' concerns that the consumption by the proposed use would impact the neighbors water wells.

The neighbors' concerns about water usage would, perhaps, be easier to address if the Applicant had presented clear numbers on its projected water consumption. Unfortunately, the testimony by the Applicant in this regard was not clear. While a figure of 15 gallons per student was often cited as the projected consumption per day, per student, this did not take into account the consumption by other users on-site, including the dance group and the YMCA. Obviously, other people will be coming onto the property for assemblies, sporting events, graduation ceremonies and other events of one kind or another throughout the course of the year. There was no clear presentation on actual water consumption figures. This lack of clarity obviously only added to the concerns of the neighbors about their own wells.

Nevertheless, despite this uncertainty and the concerns of the neighbors, the ability to take water from the ground is subject to a Maryland Department of the Environment Water Appropriations Permit, and any usage will be regulated by that agency. There was no clear evidence, certainly nothing to support a finding, that water consumption by the proposed use would cause an impact on the aquifer or on wells of adjoining or neighboring properties. Without the basis for such a finding, and in light of the regulatory authority which the MDE will exercise over ground water appropriations and usage, an adverse impact on the aquifer from the proposed use cannot be found.

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Other environmental issues raised by the neighbors generally concern the impact on the stream which flows through the subject property and to Winters Run, and associated wetlands. The neighbors, however, expressed generalized concerns only, certainly nothing of a nature which could rise to a level sufficient to support a factual finding of adverse impact. Accordingly, it is found that there will be no adverse environmental impact as a result of the proposed school.

(10) The preservation of cultural and historic landmarks.

Harford County Code Section 267-60.1 identifies as an “historic property” the bridge on Whitaker Mill Road.

According to Kenneth Schmid, the proposed school will generate, as additional traffic, approximately 180 cars in the a.m. peak hour alone. Twenty-five percent (25%) of this traffic will use, the one-lane bridge connecting Whitaker Mill Road and West Ring Factory Road. Obviously, a certain amount of afternoon peak hour traffic will also use Whitaker Mill, as will a certain amount of traffic generated by staff, administrators, spectators to school events, and others who visit the property for one reason or another. Left unsaid by any witness in this case is what, if any, impact this would have upon the historic nature of the Whitaker Mill bridge. It is accordingly found, however, that any generator of increased traffic over the bridge, such as the proposed school, will not help protect or enhance the bridge and would tend to adversely impact its historic nature.

The proposed use will accordingly create an impact which is inconsistent with the stated public policy of Harford County, at Code Section 267-59(B), which is the:

“... protection, enhancement, perpetuation and use of sites of special character or historic interest. . . ”

Code Section 267-9I not only requires the analysis of the 10 considerations set forth above, it also contains a clear and concise prohibition:

“Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it is found that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives of property or people living in the neighborhood.”

Faced with this prohibition, and in light of the findings set forth above, particularly with regard to traffic and road networks, the Board is required to deny the application.

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Furthermore, the Application must be reviewed in light of the holdings of Schultz v. Pritz which, in essence, holds that a proposed special exception may not be denied if its impact at the location proposed is no greater than at another location in the district. For reasons more fully set forth above, it is found that the proposed school at the Millstad property will cause an adverse impact on the surrounding neighbors, neighborhood and users of Whitaker Mill Road, Old Joppa Road, the Whitaker Mill Road one-lane bridge, and West Ring Factory Road, greater in kind and substance than would be the impact at some other location within the zone. While more completely set forth above those reasons for such a finding are summarized as follows:

1) The proposed school would be located on a rural collector road, accessed by Whitaker Mill Road, Old Joppa Road and West Ring Factory Road, all being rural collector roads. No other school in Harford County is located on a rural collector road. Increased traffic on this road will jeopardize the lives and property of people in the area.

2) A substantial portion of traffic to and from the property at this proposed location will use a one-lane, historic bridge. No other school in Harford County will generate traffic which will use such a structure and, indeed, no other similar location in Harford County has been identified. County public policy is to protect an existing historic structure.

3) A dangerous intersection which now operates and will continue to operate at a failing level of service will be used by a substantial portion of the traffic to and from the proposed location. There is no plan to bring that intersection up to an acceptable level of service. Mitigation of impact of the proposed use does not alter the dangerous, and failing, nature of that intersection.

4) Emergency vehicles, including fire fighting apparatus, can only access the subject property and surrounding properties from the west, along Whitaker Mill Road only. Traffic flow from the school will diminish the capacity of these vehicles to respond.

5) A Wal Mart, which will be a major traffic generator, will be built within one to two miles of the subject property. No evidence was presented on the extent of impact on the subject property by the Wal Mart construction, although it is found that there will be an impact on the proposed use and on surrounding roadways and intersections.

6) Finally, the Harford County Master Land Use Plan, while it does not mandate a denial, clearly states that such a use should not be allowed at the proposed site. No credible reason for ignoring this direction has been suggested. Accordingly, lack of compliance with the Harford County Master Land Use Plan is a further reason for distinguishing this location from others in the zone.

The above factors distinguish the subject property from any other location within the zone and will exacerbate and intensify the adverse consequence of the proposed school. As a result the proposed use at the proposed location will have a greater and more adverse impact than would be present if established at some other location within the zone.

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CONCLUSION:

For the above reasons, it is recommended that the requested special exception for the Harford Lutheran School be denied.

Date: October 27, 2006

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on NOVEMBER 29, 2006.